

United States

Circuit Court of Appeals

For the Ninth Circuit.

Appetles. (IN FOUR VOLUMES)

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of Himself and the Owners, Officers and Crew of Said Steamship, Appellant,

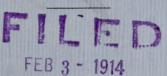
VS.

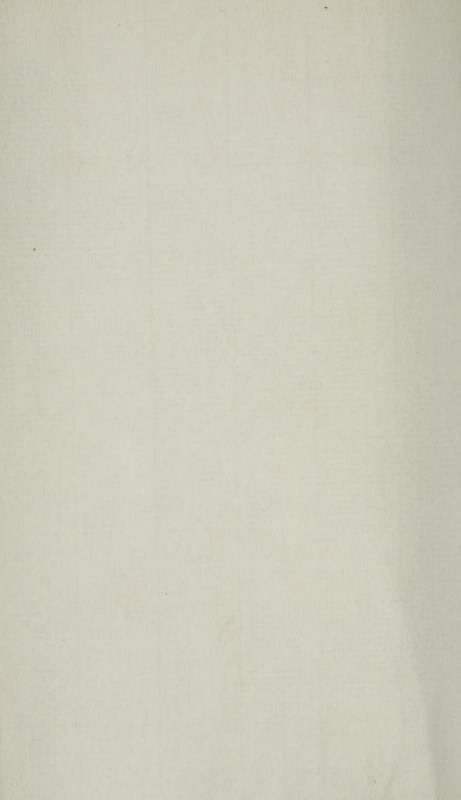
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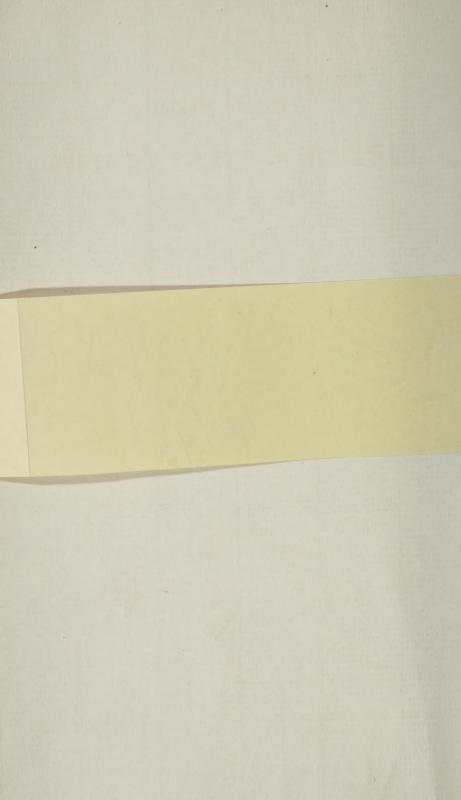
VOLUME III. (Pages 769 to 1104, Inclusive.)

Upon Appeal from the United States District Court for the Northern District of California, First Division.





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- Q. Do you know that there has been data secured showing the difference between the actual running of the ship as shown by observations and the run as shown by the log, and that this data has been published? Have you seen any such?
 - A. I don't quite understand you.
- Q. For the purpose of testing the reliability of logs— A. (Intg.) We always do that.
 - Q. Publish the data?
- A. We always test our logs that way. If you are running along the coast, for instance, you would get your observation by bearings and also read your log; if there is any current, or if there is a head sea, you would find that the two would not agree. It is for that reason seamen are constantly testing their logs. It is not necessary for anyone to say anything special on that, because we are constantly testing it ourselves for our own information.
- Q. But the tests I have reference to were for the very purpose of showing the log is reliable, that the log did not over-run or under-run except where currents were encountered, not where seas were encountered, or winds?
- A. I have never seen anything that would prove that.
- Q. You have never seen the published data on that particular matter? A. No, I have not.
- Q. Where a given ship has been tested crossing say the Atlantic both ways, and different conditions of weather shown for each day and the comparison made

between the log reckoning and the observation run of the ship?

- A. That is done on every ship in the service.
- Q. And published?
- A. I don't know that it is published in pamphlet form, but every ship does that. There is not a ship [654-533] in the service that does not do that and keep the record in its own log. It is kept in the log. You can get all the information you want on that from the log of every ship in the service.
- Q. And you assume, or do you know, that the variation between the log and the run of the ship is caused by the head seas or by the following sea?

A. It is my opinion from observation that it is affected.

- Q. Well, take this case: here is a steamer which has her nose pointed into a heavy swell; you say under those circumstances the log would over-run the speed of the ship? A. Yes, sir.
 - Q. Why? A. On account of the sea.
- Q. How would the sea affect the log in a way different from its effect on the ship, assuming that there is no current to deal with?
- A. The effect of the sea on the log would be entirely different from the effect of the sea on the ship on account of the two being entirely different. There is a little propeller working near the surface. You have the whole ship, and the propeller down a certain distance; I should not think the effect of that sea would be the same on the two.
 - Q. I certainly understand that you do not think

so, but I was wondering if you could explain the whys and wherefores of that phenomena?

A. That would require considerable mathematical demonstration to prove that if you want to prove it in any other way except observation. By constant observation you see that this thing constantly occurs. You find where you are bucking into a head sea, you constantly find your log will show more than you have gone, and it is natural, simply by experimenting that way, that you conclude that that is the reason.

Q. Could you not explain it all by interjecting into the [655—534] situation the current?

A. The current would affect it the same, would it not, just as you say? Suppose you are going through a current, that would set your ship back naturally, and it would set your log back too, would it not?

Q. Why would not the sea affect it in the same way?

A. I don't quite follow you.

Q. Why would not the sea affect the ship and the log in the same way that the current would affect the ship and the log?

Mr. DENMAN.—He just answered that question; he said one goes near the surface and the other is down in the water.

A. Let me get that again.

Mr. McCLANAHAN.—Q. Why would not the sea affect the ship and the propeller in the same

way that the current would, and to the same extent?

- A. Because of the difference between the two. I don't think the effect would be the same.
 - Q. You don't think it would?
 - A. No, on the ship and on the propeller.
- Q. It would be different whether it was the current or the sea?
- A. Whether it was setting at all, whether it was in a heavy sea, and that increases with the sea if you have a big heavy sea.
- Q. Is it your experience that the actual run of the ship always varies from the run shown by the log?
 - A. Yes, it usually does.
 - Q. Always?
- A. Yes, it usually does. With rare exceptions. It does in the majority of cases. I will not say what percentage. As a rule your log rarely shows exactly the actual distance between two points. [656—535]
 - Q. How do you account for that?
- A. Inaccuracy of steering; probably a slight error in your log. Those logs are not absolutely correct. We find some that have to have a correction applied to them. One of the best logs I have ever had underread about 10 per cent; you had to add about 10 per cent to it, and it was about as near right as you could get it. That was due to its construction.
- Q. Did you add the 10 per cent when you were going with the swell or against it?
- A. In general the 10 per cent was added to this log no matter how we were going. That was due

to the construction of the log.

Q. What would you say of a log that in a headswell would over-run the speed of the ship from three-quarters to a whole knot in half an hour?

Mr. DENMAN.—In half an hour?

Mr. McCLANAHAN.—No, in one hour.

Mr. DENMAN.—I object to that as not being shown by any of the evidence in this case, or applying to any matter shown here, because the only case of over-running is six-tenths in an hour.

A. It would depend on the speed of the ship. For example, if a ship was only making 3 knots in an hour, one knot would be an enormous over-run.

Mr. McCLANAHAN.—Q. Suppose the ship was making between 12 and 15 knots?

A. The proportion of the distance run would enter into it, whether it was one per cent or 50 per cent of the distance; that would affect the probability of the amount being over-run. For instance, if you have gone 20 miles an over-run of your log of say one knot would not be excessive, but if you had only gone 5 miles and if your log over-ran one [657—536] knot, in one case it would be one-twentieth and in the other case it would be one-fifth.

Q. Oh, yes, I understand that, but my question covered that; I said in an hour she was making between 12 and 15 knots and she over-ran from three-quarters of a knot to a whole knot in that time?

A. Well, I think a whole lot would be about the extreme limit of that distance. I should think that

would be all that could be expected.

- Q. You have spoken of the effect on the speed of a ship heading into a head swell, and I believe you said that in your opinion it would decrease the speed? A. Yes, sir.
- Q. What makes you say that,—what would be the factors entering into the matter, and say a ship of the "Beaver's" type?
- A. The force of the sea striking against the ship would set her back.
 - Q. With no wind?
- A. With no wind. The force of the sea would be the main thing anyway. The sea would set her back much more than the wind.
- Q. Do you understand that the swell itself travels?
- A. Bucking into a swell reduces the speed of a ship.
 - Q. I say do you understand that the sea travels?
 - A. Do you mean the motion of translation?
 - Q. I mean the physical water, the body itself?
- A. No, I do not understand that. It only travels when it strikes shallow water. But that is a different thing altogether.
- Q. In deep water it does not travel, the motion is up and down?
- A. Yes, the motion is up and down, but that is not what stops the ship. [658—537]
 - Q. What is it that stops the ship?
- A. The ship striking in to the heavy big wall of water; to put an extreme case, if you struck a wall

Q. Is that true of a swell?

A. There is no difference between a swell and a sea of any kind. A swell is any big mass of water, and any big mass of water that a ship bucks into will retard her speed. It is the resistance.

Q. Does not the ship as she strikes the crest of the swell rise?

A. Yes, she rises and then she goes down and then she bucks into the next one.

Q. If it is a head sea, yes, but if it was a swell she would not buck into it, would she?

A. I don't know what difference there is between a swell and any other sea. A swell is a sea, is it not?

Q. Your testimony then, has been based on the assumption that there is a sea as distinguished from a swell?

Mr. DENMAN.—That is not his testimony; it is nothing like that.

Mr. McCLANAHAN.—Answer my question.

A. To me it is the same thing.

Q. That is, there is no difference to you between a sea and a swell?

A. No; that is, if I understand what you mean by a swell.

Q. What do you mean by a swell?

A. I mean that it is a big rolling sea. If the water is perfectly smooth and there is no swell there is no sea, is there, but if this water begins to have a motion then you get up a swell or a sea, just as

(Testimony of R. F. Lopez.) you choose to call it.

- Q. Don't you recognize that a head sea or a heavy sea, as we [659—538] understand the term, is caused by wind? A. Yes, sir.
- Q. And a swell, as distinguished from that is caused by something else, is it not?
 - A. No, it is caused by wind.
 - Q. Yes, wind that has passed? A. Yes, sir.
 - Q. Passed wind?
- A. It does not make any difference, the effect is there, it started this water in motion.
- Q. And there is no difference, in your opinion, between a heavy sea which is caused by present wind and—
- A. (Intg.) It is simply a difference in name; for instance, after a gale has gone down we speak of a heavy swell still hanging on; this thing is gradually diminishing after the force which created it has passed away. But what I mean is, that any ship that has to go into a swell or a sea, whatever you choose to call it, where that thing is coming toward the bow and the ship is going into that, that will retard its motion.
- Q. Don't you know, Captain, to the contrary, that these fast Atlantic liners travel faster in a heavy sea under the same number of revolutions of their engines?
 - A. No, I don't know that and I don't believe it.
 - Q. You don't know that? A. No.
 - Q. If it has been stated by a man in this case

who has made observations of it, you don't believe him?

- A. No, I don't believe him, that they go faster. I don't believe a ship was ever built that will go faster in a heavy sea than she will in smooth water. It is contrary to every principle of force and everything else.
- Q. When you state that the reduction of 3 knots from 15 might possibly be accounted for in the speed of the "Beaver" under a heavy head sea, you spoke of the propeller racing; is that a part of your understanding of the situation? A. Yes, sir.

[660-539]

- Q. Of course, I can understand very easily that if the propeller raced she would not make the speed she would if the propeller were submerged all the tim?

 A. That is correct.
- Q. You are not interested, Captain, are you, in this matter, one way or the other?
 - A. None whatever.
- Q. Do you know any of the parties to the litigation?
- A. I know the Vice-President and Manager of the Pacific Mail.
 - Q. Who it that? A. Mr. Schwerin.
 - Q. Do you know him quite intimately?
 - A. Very well, yes indeed.
- Q. Have you talked with him about the case at all?
 - A. No, not at all. I did not know that the thing

had occurred at all until Mr. Denman spoke to me about it.

Q. Captain, would the fact that the "Beaver" had injured her plates in this collision at all affect the question of the deviation of her compass?

Mr. DENMAN.—What injury to the plates?

A. That she injured her plates?

Mr. McCLANAHAN.—Q. In the bow of the ship, yes.

A. I should not think so, I should not think so; it might affect her speed.

Redirect Examination.

Mr. DENMAN.—Q. Captain, I want to ask you about one or two things. You were speaking of the vessel coming before the following sea and Mr. McClanahan said to you that the only deterrent that you had in mind was the yawing of the vessel. Supposing that that is sufficient to expose a part of the propeller, would that also deter the vessel?

- A. I think I said it would cause racing also. [661—540]
- Q. Any exposure of the propeller out of the water will diminish the power of the propeller, will it not?
 - A. Undoubtedly.
- Q. And the greater the exposure the greater the deterrent? A. Quite true.
- Q. That would apply to either going before the sea, or following it or into it? A. Yes.
- Q. You do not make a deviation-table for every degree of the compass, or deviation so much for every degree, do you? A. Every point.
 - Q. So that a man will estimate—

- A. (Intg.) He interpolates between the points.
- Q. He interpolates between the points the degrees? A. Yes.
- Q. As I understand it, your statement is that a current would carry the log along the same as the ship; that is, there would be a constant for the current and the ship but there would be a variable for the effect of the wave on the log as distinguished from the wave on the ship?
 - A. That is right.
- Q. That is due to the fact that the ship sets deep in the water below the surface line of the wave and the log is up following the surface? A. Yes.
- Q. Now, as to variation in disturbance of the water, is that greater below the wave or in the wave itself?
 - A. In the wave itself is the great disturbance.
- Q. Is that greater at the periphery of the wave or at the center of its diameter?
 - A. At the periphery—at the top.
- Q. What do you mean by the setting home of the log?
- A. I mean the log being taken in the direction of the ship, toward the ship.
 - Q. By the following sea? A. Yes. [662—541]
- Q. Is that a well-known sea phrase, the setting home of the log? A. Yes, sir.
- Q. Is it known to the common sailor as well as to the officer?
- Mr. McCLANAHAN.—I object to that question as a conclusion.

Mr. DENMAN.—The point I am making is this: if this phenomena has finally been turned over or incorporated in a homely phrase, that that fact would have a value in determining its weight.

Mr. McCLANAHAN.—And the point I make is that the Captain is not familiar with what the common sailor knows. If he is, he is a phenomena himself. He may be familiar with what the common sailor is supposed to know.

Mr. DENMAN.—Q. In your lighthouse service, Captain, and the service in the Geodetic work, was it, or Coast Survey? A. Coast Survey.

Q. Are you brought in very close contact with the common sailor?

A. Not any more so than on a man-of-war—about the same relations, very much the same.

Q. How about handling small boats, and that sort of thing?

A. Well, we handle small boats in about the same way. I think it is practically the same. My knowledge of sailors is about the same in one service as it is in the other.

Q. Do not the sailors constantly report to you? A. Yes.

Q. And if the phrase "set home" was a familiar sailor phrase, would they not be likely to hear it?

A. Yes.

Q. And do you not consider the phrase "set home" on the log, that that is a familiar phrase to describe that phenomena? A. I do.

Q. Would you consider six-tenths of a knot as an

extraordinary [663—542] or an unusual amount for a log to over-run a ship when going at 15 knots in the course of an hour?

Mr. McCLANAHAN.—I object to the question upon the ground that there is no evidence in the case to support the hypothesis.

A. I would not.

Recross-examination.

Mr. McCLANAHAN.—Q. I am reminded, Captain, by your redirect examination that you have been connected with the Coast and Geodetic Survey?

A. Yes.

- Q. Are you familiar with this magazine or pamphlet which I hand you (handing)?
 - A. Tide Tables of the United States, yes.
- Q. That is an authentic record of Tide Tables on this coast? A. Yes.
 - Q. Recognized as authentic among seafaring men?
 - A. Yes, it is.
- Q. Will you please tell me by referring to that the time of high water at Fort Point.

(Addressing Mr. Denman.) Oh, let the witness tell me, Mr. Denman.

- Q. (Continuing.) On the 22d of November. 1910. What was the hour of high water in the afternoon?
 - A. In the afternoon it would be 3:10.
 - Q. What was the height of the water?
 - A. 4.8 feet.
- Q. Will you please tell me the tidal difference between Fort Point and Pt. Reyes?
 - A. It is plus four-tenths feet.

Q. What time would it be high water at Pt. Reyes on that day?

A. It is minus 14 minutes from 3.10; that would be 2.56. [664—543]

Further Redirect Examination.

Mr. DENMAN.—Q. Let me ask you, Captain, with regard to yawing, a good helmsman will practically correct up the yawing in one direction or another and keep on his course, will he not, on the average?

Mr. McCLANAHAN.—I object to the question as to what a good helmsman would do.

A. He would correct it much better than a poor helmsman would. He might not be able to correct it altogether. I do not think he would. It would depend on the strength of the sea and so forth.

Mr. DENMAN.—Q. And when you say "not altogether," don't you expect a good helmsman under such circumstances will bring out the vessel approximately where you intend to go?

Mr. McCLANAHAN.—I object to that as calling for the conclusion and expectation of the witness, and not evidence.

A. He would do better than a poor helmsman, but just how near he would get to the course would be impossible to tell.

Mr. DENMAN.—Q. Would you not expect him to approach it with fair accuracy?

A. Yes, with a certain amount of accuracy.

Q. Captain, you have been testifying concerning the amount of time at full speed you estimated the "Beaver" made between 4 o'clock and 5:19 under

certain conditions; did you prepare this table (indicating)? A. I did.

- Q. And that is correct, is it?
- A. It is correct.

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- Q. That is, the data that was given you?
- A. Yes, sir, the data that was given me.

Mr. DENMAN.—I offer this in evidence.

(The document was marked Respondent's Exhibit "D" and is as follows:) [665—544]
Bells.

min

4 o clock /2 nan speed.		ши.	
4.07 '' full ''	$.7 \text{ min. } \frac{1}{2} \text{ speed}$	d— 3.5 full s	speed
4.07 to 4.12 picking up	.5 " ¾ "	- 3.75 ''	6.6
4.12 to 5.03 full speed		—51.00 ''	66
5.03 ahead slow			
5.04 stop	8 min. 3/4 "	6.00 ''	66
5.05 ahead slow	8 min. 3/4 " 3½ min. 3/8 "	- 1.25 ''	66
5.11 " half			
5.14½ " slow		.75 ''	66
$5.16-\frac{1}{2}$ to 5.19 stopped.	2 min. 3/8	.50	
72	76		

2½ ¼ about 66.75 " Further Recross-examination.

Mr. McCLANAHAN.—Q. What do you mean by "correct," Captain? You mean that is the result of your judgment in the matter?

- A. No, I referred to my work.
- Q. That is, you mean your figures are right?
- A. Yes, they are correct.
- Q. And, of course, are the result of your estimates?
- A. Yes, and that I made that; not as to whether or not the "Beaver" went that distance in that time.

(The further hearing of this matter was thereupon continued until to-morrow, Thursday, July 20, 1911, at 10 A. M.) [666—545]

Thursday, July 20th, 1911.

[Testimony of Octavia Buckingham, for Claimant.]

OCTAVIA BUCKINGHAM called for the claimant, "Beaver," sworn.

Mr. DENMAN.—Q. Mrs. Buckingham, what is your occupation?

- A. Stenographer and bookkeeper.
- Q. How long have you been in my employ?
- A. Nearly two years.
- Q. Were you in my employ at the time we took the statements of the sailors and officers of the "Beaver"? A. Yes.

Mr. DENMAN.—I will state that Mr. McClanahan has indicated to me that he desires to get the original dictation of the statements made by me at the time the witnesses were here. As these are privileged communications under the law of California I voluntarily put my stenographer on the stand for the purpose of giving him a chance to examine the statements.

Mr. McCLANAHAN.—Now, let me make a statement—

Mr. DENMAN.—You will see my point in a moment.

Mr. McCLANAHAN.—Well, I see your point. You are doing something that I could do myself without your granting me the privilege, namely, I could call your stenographer if I wanted her. I do not

want what you have stated at all. I wanted simply to examine the young lady on the matter of Judson's statement in this office with respect to the conversation held between Captain Kidston and Captain Lie on board of the "Beaver"; and also to examine the young lady as to the statement made by Ettershank, the Second Officer. That is all. I do not consider that your statement that the statements made under those circumstances are at all privileged is correct.

[667—546] They are statements made by outside third parties to your stenographer, or to you, and taken down by the stenographer.

Mr. DENMAN.—You will see in one moment, Mr. McClanahan, that you misunderstood the situation.

- Q. Who gave you the language that you have written in your book of these statements? Was it made directly from the witness to you or from the witness to me and from me to you?
- A. I was here when the witness made the remarks and you put them into narrative form in English.
 - Q. And you took them down at that time?
 - A. I took them down at that time.
- Q. So the statement, so far as you have it on your book, was made from me to you? A. Yes.
 - Q. Will you turn to the statement of Judson?
- A. This statement is evidently, Mr. Denman, the disjointed remarks I took down from Judson; is that the one you want?
- A. That is correct, yes. By the way, are you a court stenographer? A. No.
 - Q. Can you take a running conversation?

A. No; I cannot.

Q. Just read Judson's statement as you have it there.

Mr. McCLANAHAN.—I object to the witness reading Judson's statement.

Mr. DENMAN.—Well, take the witness, Mr. Mc-Clanahan. I was going to give what you asked for; now you take it yourself.

Mr. McCLANAHAN.—No, I did not ask for anything from you, Mr. Denman. I am perfectly surprised that you would call this witness for the purpose you have stated. It is entirely irregular. There must be some object that you have in mind in doing so. I said that I would want your young lady stenographer with her notes on rebuttal; now you have called her on your [668—547] main defense and asked her to read a statement which was made here in your office. I say that is entirely irregular. However, whatever your purpose may be in this proceeding, I will take the advantage of cross-examining her.

Cross-examination.

Mr. McCLANAHAN.—Q. Mrs. Buckingham, do you remember this man Judson?

A. I suppose I should know him if I saw him again.

Q. That you should know him?

A. No, I don't know that I could pick him out. I remember he was here.

Q. You remember the man was here? A. Yes.

Q. Although you might not recognize him if you

(Testimony of Octavia Buckingham.) saw him on the street?

- A. No, I don't think I should.
- Q. Who was present when he made his statement?
- A. Captain Kidston and Ettershank were in the room a part of the time; I could not say just what part.
 - Q. When was this statement made?
 - A. About the 19th of January.
- Q. Why do you say about; don't you know exactly what date?
- A. No, I do not, but as far as I can figure that is the date.
 - Q. Would not your notes show the date?
- A. That is the date I figure from my notes, judging from letters written before and after that.
- Q. Was that the date also that Ettershank made a statement? A. Yes.
 - Q. On the same date? A. Yes.
 - Q. They were here together? A. Yes.
- Q. In the Judson statement, was there any reference made by Judson to a conversation which he heard between Captain Lie and Captain Kidston on the bridge of the "Beaver" on the day [669—548] of the collision? Holding that question in abeyance for a moment I will ask you if you have not read your notes very recently?

 A. No, I have not.
 - Q. You have not? A. No.
- Q. Then read them and find out if there is any reference to a conversation. While you are reading to yourself these notes I will ask you if you have any independent recollection as to whether there was

(Testimony of Octavia Buckingham.) such a statement?

- A. Well, I know several of the men did hear the conversation but I could not at the present time say just which of them did. Here it is. Captain Kidston—
- Q. (Intg.) Just answer the question whether such a statement in reference to a conversation was made, or whether it was not made by Judson?
 - A. It was made.
- Q. Just read it through to yourself; be sure of that? A. Yes, it is there.
- Q. After this statement was made by Judson, did you make a transcript of it? A. Yes.
- Q. Of the statement as he had made it, or as it was revised by Mr. Denman?
 - A. I made one as he made it.
 - Q. As he made it? A. Yes.
- Q. And do you know whether he subsequently signed that statement or not?
- A. I believe he did; I did not actually see him sign it.
- Q. You say he made the statement and you took it down in shorthand and then transcribed it later as he made it? A. Yes.
- Q. Prior to his making the statement, was there any conversation of which you have notes that led up to his making the [670—549] statement, with reference to the statement?
- A. There was some conversation but I did not make notes of it. There was some general conversation.

- Q. Some general conversation? A. Yes.
- Q. Between Denman and Kidston and Ettershank and Judson altogether?
 - A. That I could not say.
 - Q. Well, Mr. Denman was here?
- A. Mr. Denman was here; they were all here, but just who participated in the conversation I could not say.
- Q. But it was a general conversation with reference to the conversation on the bridge?
 - A. Yes.
- Q. And then after that conversation had cleared the matter up, Mr. Judson made his statement to you? A. Yes.
 - Q. Now, will you read his statement as he made it?
- A. (Reading:) "I did not hear any whistle; I was in bed but got up after the collision."

Mr. McCLANAHAN.—I will have to ask that that be stricken out.

- Q. I want, Mrs. Buckingham, the statement of Judson with reference to the conversation on the bridge that you subsequently transcribed for him to sign.
- A. (Reading:) "He came on board. Captain Kidston went over and pulled his coat apart and said, 'I see you have dry clothes on'; 'Yes, I have dry clothes on'; 'I am very sorry the accident happened.'" That was Captain Kidston's remark. "I had heard the whistle—I knew it was the 'Bear' or 'Beaver' for 15 minutes and had stopped more than 10 minutes dead still in the trough of the sea

(Testimony of Octavia Buckingham.) taking soundings. We stopped still and got 32 fathoms. Then Lie went below." [671—550]

- Q. Now, will you please look through your further notes and see if there was any other statement made by Judson at that time with reference to the conversation on the bridge? In other words, I want to know if you have given us all of his statement with reference to the conversation on the bridge?
 - A. That is all there is of it.
- Q. You took no further notes of Judson's remarks at this meeting with reference to the conversation on the bridge, than you have given me?
 - A. No, none whatever.
 - Q. And subsequently you took none from Judson?
- Q. In fact, you had nothing more to do with the man after that, did you? A. No.
 - Q. And you had not taken any prior to that?
 - A. No.
 - Q. Did Mr. Ettershank make a similar statement?
 - A. Yes.
- Q. With reference to the conversation on the brige? A. Well, that I don't know; I will see.
- Q. I don't mean similar to the conversation itself, but he made a statement at that time, did he?
 - A. Yes.
- Q. And it was from his statement at that time that you drafted the written statement that he subsequently signed? A. Yes.
- Q. Now, will you turn to Mr. Ettershank's statement; have you got it? A. Yes.
 - Q. Just his statement of the conversation on the

(Testimony of Octavia Buckingham.) bridge: please read it.

- A. (Reading:) "Captain Kidston remarked that he had on a dry suit and then said he was terrible sorry the accident happened. Captain Lie was nervous and shaking but he said he was all right. He said he heard our whistle for 15 minutes before the collision, knew it was either the 'Bear' [672—551] or the 'Beaver,' that he had been taking soundings and that he had been at a standstill rolling the trough of the seas for over 10 minutes before the collision." That is all there is about the conversation.
- Q. And that you subsequently put in a transcribed form for him to sign? A. Yes.
- Q. He made no further statement in your presence with reference to the conversation on the bridge than that which you have given? A. No.
 - Q. Nor had he made one prior to that to you?
 - A. No.
- Q. After you had transcribed both of these statements which you have now placed in the record in this case, did you make any changes in them under Mr. Denman's orders or directions?
- A. No. The scrap conversation, of course, was put into English. Of course, if Mr. Denman asked a question and the man said "yes," if I put down "yes" it would not mean anything.
- Q. I have been misled by you. I understood that what you have given in the record here of these two respective conversations was all—
 - A. (Intg.) That is absolutely as they gave it.
 - Q. And that was all that they gave with reference

(Testimony of Octavia Buckingham.) to the conversation on the bridge? A. Yes.

- Q. Now, I say you put that statement as it was given to you into a transcribed form?
 - A. Yes, exactly as it came from them.
- Q. And that transcribed form has never been changed by you? A. Oh, no.
- Q. So that the transcribed form should agree with what you have stated here? A. Yes. [673—552]
 - Q. Nothing was added to it or taken from it?
 - A. No, nothing whatever,
- Q. How soon after the statement was made did you transcribe it?
- A. Well, I presume I did it right away; I don't remember.
 - Q. And then you turned it over to Mr. Denman?
 - A. Yes.
 - Q. And that is the last you have seen of it?
 - A. Yes.

[Testimony of William Kidston, for Claimant.]

WILLIAM KIDSTON, called for the claimant "Beaver," sworn.

Mr. DENMAN.—Q. Captain, how old are you?

- A. 48.
- Q. How long have you been at sea?
- A. 33 years.
- Q. All seas?
- A. There are a few seas I have not been on.
- Q. Can you mention them better by exception than by giving the whole list? You have sailed the Meditterranean, have you? A. No.
 - Q. That is one of the exceptions?

(Testimony of William Kidston.)

- A. That is one of the exceptions.
- Q. You have sailed the Pacific and the Atlantic?
- A. Yes, sir.
- Q. And the Indian Ocean? A. Yes.
- Q. The China Seas? A. Yes.
- Q. When did you first get your officer's papers?
- A. 1885 or 1886, I forget which.
- Q. In either 1885 or 1886? A. Yes, sir.
- Q. And when did you get your master's papers?
- A. One year later after I got my first papers.
- Q. When did you get your first command?
- A. At that time. I was about 23 years old when I first took a command.
- Q. Have you ever served at sea in any other capacity than commander since then?
 - A. Yes, as First Officer. [674-553]
 - Q. How long a time did you serve as First Officer?
- A. Oh, I could not specify the time. Off and on. My first command was steam. Some years afterwards I went in a sailing ship and had the command of a sailing ship for three years. After I gave up the sailing ship I went back into steam and had to go as First Officer, and I went off and on as First Officer, but I don't know how long it was before I got command of a steamer again.
- Q. How long have you been in command of steamers, roughly speaking?
 - A. 12 or 14 years, I should say.
 - Q. On this coast? A. And on the Atlantic.
 - Q. Sailing from the Atlantic to the Pacific?
 - A. Yes, sir.

(Testimony of William Kidston.)

- Q. Are you familiar with the waters of the coast of California? A. I think I am.
- Q. And with the climatic conditions on this coast? A. Yes, sir.
- Q. How long have you been commander of the "Beaver"?
- A. I took command of the "Beaver" at Newport News, in February, 1910, the date I don't remember, and I was Commander of her until the 22d of November, 1910. I brought her out here to this coast.
 - Q. And then ran her on the coast?
 - A. And then ran her on the coast.
- Q. Had you been in the employ of the Pacific Mail—
- A. (Intg.) Just a moment; I was out of her one voyage after I arrived here; I was sick and when she was ready for sea in June I was sick in the hospital and another commander took her up and then I took her on the second trip.
 - Q. You have been sick recently too?
 - A. Yes. [675—554]
 - Q. And you have been in a hospital?
 - A. No, I was home this time.
- Q. You have recently been under an operation, have you not? A. Yes, sir.
- Q. During the period you had command of vessels, and prior to the time of the collision with the "Selja," had you ever lost a vessel? A. No, sir.
- Q. Did you ever have any injury to a vessel that you had command of?

- A. I don't recollect of ever injuring a ship in my life.
- Q. You say you had been in command of the "Beaver" with the exception of one voyage from the time she left Newport News until the collision?
 - A. Yes, sir.
- Q. You are as familiar as anybody in the world is with the handling of that ship, are you not?
- A. Yes, sir. I watched her building; I launched with her—no, not launched with her, but I was on her trial trip with her.
- Q. Do you recollect the 22d day of November, 1910, leaving the port of San Francisco on a northern voyage?
 - A. Do I remember the 22d of November, 1910?
 - Q. Yes. A. Yes, sir.
 - Q. By what route did you leave the port?
 - A. Up the North Channel.
- Q. What was the condition of the water in the channel as you came through?
- A. There was a very heavy break on the North Bank, with the swell reaching across the channel, a beam swell.
 - Q. Was there much of a swell in the channel?
 - A. Quite a bit of a swell. [676—555]
- Q. Was it enough to impede or retard the progress of your vessel, coming on her beam?
 - A. I did not think so.
- Q. After you left the North Channel, what course did you sail—your first course?
 - A. After we left No. 2 Buoy our first course was

(Testimony of William Kidston.) south 83 degrees west.

Q. How long did you continue on that course?

A. 30 minutes.

Mr. McCLANAHAN.—Q. How long did you say?

A. 30 minutes; that is my best recollection, 30 minutes.

Mr. DENMAN.—Q. And what course did you then make? A. North 86 west.

- Q. Was that a regular voyage you were sailing on to the north?

 A. Regular courses.
- Q. And did your vessel make regular trips north? Where were you going then, Captain?
 - A. To Portland, Oregon.
 - Q. Was that a regular trip of your steamer?
 - A. Regular; every two weeks.
- Q. And were those the usual courses on which you sailed on that voyage? A. Yes, sir.
- Q. What was the condition of the sea after you left the North Channel?
- A. After we left No. 2 Buoy—when we got out to No. 2 Buoy we commenced to get the effect of a heavy westerly swell.
 - Q. What is No. 2 Buoy, what buoy is that?
- A. It marks the northern entrance to the North Channel.
- Q. And that is on the westerly or easterly side of the channel, which?
 - A. It is on the westerly side of the channel.
- Q. Whereabouts on this voyage did you string your log?

A. We generally put it up just before getting to No. 2 Buoy.

- Q. And did you string your log there on this occasion?
- A. Yes; that is in order to get the turns out of the lines and [677—556] have it ready for setting at No. 2 Buoy.
- Q. Well, you strung it before arriving at No. 2 Buoy?
 - A. Yes, and then set it at No. 2 Buoy.
- Q. You were describing the weather; was this an ordinary swell or was it unusual?
- Mr. McCLANAHAN.—I think, Mr. Denman, the witness knows more about swells than you do and if you ask him what was the character of the swell it will be more appropriate.
- Mr. DENMAN.—But I asked him the two alternatives, ordinary or unusual.
- Mr. McCLANAHAN.—I am willing to let the ordinary matters go without objection in this examination, Mr. Denman, but not on any material matters.
- Mr. DENMAN.—Q. What do you say as to the condition of the sea on that day after you left No. 2 Buoy?
- A. I would say that after we left No. 2 Buoy the swell was a heavy swell.
- Q. Did that increase or decrease as you proceeded on the voyage?
- A. As we drew up to and passed Duxbury Reef it commenced to increase the volume of the swell.

- A. I ordered the helm hard to port and stop and full speed astern.
 - Q. How did you give your signal "stop"?
 - A. By the telegraph.
- Q. Where did you say you heard that second whistle?
- A. When I heard the second whistle it seemed to me a point on the starboard bow.
 - Q. A point on the starboard bow?
 - A. As near as I can judge.
- Q. It was in the same place as where the Second Officer reported to you?
- A. It was the same as he reported, yes. The whistle in the fog is very hard to locate to a point, or half a point, coming on suddenly, where you only get the sound for maybe 3 or 4 seconds.
- Q. You say you ordered full speed astern, was that order obeyed? A. Yes, sir.
 - Q. How soon? A. Immediately,
 - Q. How could you tell that, Captain?
- A. The moment that that order is obeyed, we can feel the motion, the vibration.
 - Q. The vibration of the ship? A. Yes, sir.
- Q. Did you have a lively vibration on this occasion? A. Very.
 - Q. What is the horse-power of your ship?
- A. We have developed in the neighborhood of 4800 horse-power. [680—559]
 - Q. What do you think you had on that day?
 - A. Oh, I suppose maybe 4,000 or 4,200.
 - Q. 4,000 or 4,200 horse-power? A. Yes.

- Q. What effect does it have on your ship to go full speed astern? How was your helm?
 - A. Hard-a-port.
- Q. How does it affect the direction in which your vessel will travel through the water while going ahead and before she comes to a stop, by putting the helm hard-a-port and your propeller full speed astern? A. It swings her stem to starboard.
- Q. What sort of a propeller did you have, a right-hand or a left-hand? A. A right-hand.
- Q. And is that the usual effect of a right-hand propeller? A. I found it so on that ship.
 - Q. Does she respond rapidly, or not?
 - A. Very.
 - Q. Very rapidly? A. Yes.
 - Q. And did she begin to swing? A. Yes, sir.
- Q. At the time you gave the signal full speed astern, had you seen the "Selja"? A. No, sir.
 - Q. How soon after did you see her?
 - A. Some seconds; I would not be sure how many.
 - Q. Where was she lying when you saw her?
 - A. She was a little on our starboard bow.
 - Q. Where was she lying with reference to the sea?
 - A. In the trough of the sea.
 - Q. About what angle was she lying from you?
 - A. Right angle.
 - Q. Did you strike her? A. Yes, sir.
- Q. Under what circumstances? Just describe the circumstances of the striking. Whereabouts did you hit her?

- A. Forward of amidships. I would say about her No. 2 hatch.
 - Q. About her No. 2 hatch?
- A. Probably a little forward of her No. 2 hatch. [681—560]
 - Q. Do you know how far you got into her?
 - A. 10 or 12 feet.
- Q. What caused you to penetrate that far? By the way, is that a weak or a strong portion of her construction, where you struck her?
- Mr. McCLANAHAN.—I object to the question upon the ground that the witness has shown no familiarity with the structure of the "Selja."

Mr. DENMAN.—Answer the question.

- A. I would say that if we struck her by the fore-hatch, abreast of the fore-hatch, naturally it would be a little weaker than if we struck her some place else.
 - Q. What was the reason of that?
- A. Well, she had very wide hatches and the supports of her beams and her construction from her hatches out to her shell-plates would not be all the way across and would not have so much ability to stand it as if I had struck her on the amidships section where her beams run all the way across the ship.
- Q. That is a weaker place than where there is athwartship bulkheads? A. Yes, sir.
- Q. What speed do you think you had when you hit her? A. I did not think we had any speed.
 - Q. Well, how did you come to hit her?

A. My ship looked to be still; it looked as though I had got the headway off her.

Mr. McCLANAHAN.—Q. Are you referring now to the "Selja" or the "Beaver"?

A. I am talking about the "Beaver"; but she may have had a little headway; I would not be certain.

Mr. DENMAN.—Q. Is she very sharp in construction?

- A. Very sharp. But it seemed to me as though the penetrating [682—561] we done was more a chop into her than it was a ram.
 - Q. What would cause a chopping motion?
- A. I think that just as we came in contact with the ship we had raised on the swell and as we came down we hit her and it was a sort of a chop, and after we once penetrated the athwartship section and her shell-plating there was nothing to stop us from going 10 feet more into her.
- Q. About in what direction was the "Selja" pointing with reference to the swell at the time you struck her?
 - A. She was heading up toward the swell.
- Q. You don't mean by that she was heading right into the swell?
- A. No, she was heading toward the swell. She had turned out a bit out of the trough and was headed toward it.
 - Q. She sunk subsequently, did she not?
 - A. Yes.
- Q. What direction was she pointing when she sunk?

- A. It looked to me as though she was pointing head in to the swell exactly.
 - Q. Could you tell?
- A. I say it looked to me as if she was pointing head in to the swell when she sunk.
 - Q. Did she go down upright, or how did she sink?
- A. She went down headfirst until I presume her bow hit the bottom and then she steadied that way just a little while, with her stern sticking out of the water I should say 100 or more feet, and then she gradually turned over bottom up and sank.
- Q. What was the condition of the weather as you were sailing on this last course of yours?
 - A. It was foggy.
- Q. Did the sea continue in this condition that you found it at the beginning of the course?
- A. Yes, getting a little heavier as we drew out clear of the land. As we opened up the point the sea came down a little [683—562] heavier.
- Q. Had you ever experienced as heavy a sea as this on this run of this vessel?
- A. Oh, yes, I have experienced just as heavy a swell.
- Q. About what speed do you think you were making through the water at say 3 o'clock on that day?
 - A. In the neighborhood of 12 knots.
- Q. How much do you think, in your opinion, the sea—the swell—had cut down her speed?
 - A. About 3 knots.
- Q. I forgot to ask you,—yours was a passenger-ship? A. Yes, sir.

- Q. You were on passenger travel?
- A. Yes, large passenger travel.
- Q. Had you given any orders changing the speed of the vessel from 3 o'clock that day?
 - A. Yes, sir.
 - Q. What speed did you order? A. 76 turns.
 - Q. Why did you do that?
- A. I wanted to regulate the amount of turns the ship could make so as to know if possible what she was doing—what she would be doing.
- Q. About what rate do you ordinarily run on those voyages? A. Oh, 77 or 78 turns.
 - Q. Sometimes you get up to 79?
- A. Yes, and sometimes up to 80; sometimes a little more and sometimes a little less; generally about 77 or 78 turns.
- Q. At the time of the collision could you see land—when the collision occurred itself? A. No.
 - Q. Did the fog lift any at any time?
- A. Just after the collision the fog lifted; it cleared away quite a bit.
 - Q. Could you see land? A. Yes. [684—563]
- Q. Could you make out any point that is known to you on the shore? A. Yes, sir.
 - Q. What did you see?
 - A. Pt. Reyes; South Point.
- Q. About what distance did Pt. Reyes seem to you to be, about what distance?
 - A. Oh, 5 or 6 miles it seemed to me.
 - Q. And South Point?
 - A. About 4 miles.

- Q. You are familiar with those two points?
- A. Yes, sir.
- Q. Sufficiently familiar so as to know those two points when you see them? A. Yes, sir.
- Q. What, if anything, did you do with reference to saving the crew of the "Selja"?
- A. Just as soon as we backed out of the hole of the "Selja" I could plainly see that the ship was doomed to sink; I called boat's quarters and cleared away all the boats and ordered two boats lowered. These boats were lowered and went to the assistance of the "Selja" in rescuing her crew.
 - Q. Did you succeed in rescuing the crew?
- A. They were all saved with the exception I understood of two Chinamen who were drowned.
 - Q. Did you return to San Francisco?
 - A. Yes, sir.
 - Q. Had your vessel suffered any injury?
 - A. Yes, sir.
 - Q. What had happened?
- A. She stove in her bow plating and her stem forward of the collision bulkhead. I will put it this way, she bent and twisted up her stem and stove in her shell-plating forward of the collision bulkhead.
- Q. About what time did you start back to the city, Captain?
- A. I think I gave the order to go ahead slow, on the starboard helm, at 3:57.
- Q. What course did you steer back—directly to the North Channel?
 - A. No, to the light-ship. I steered by ship's com-

pass—standard compass, south 71 degrees east. [685—564]

- Q. Is there any deviation on that compass of your's? A. Yes, sir.
 - Q. How much is the deviation?
 - A. On that course it is about 4 degrees easterly.
- Q. Who had computed the deviation on your compass? A. I have myself, and my officers.
- Q. How is that computed, for each degree or for each point on the compass?
- A. Each point, excepting that when we are steering the course I steer degree courses altogether.
 - Q. You steer degree courses?
- A. Yes, I steer degree courses, and always when the sun is visible, in the forenoon or afternoon, the officer on watch gets an Azimuth on that course and consequently he would have the deviation on the course I was then steering, which would be in degree; but taking it directly from the compass when I swing the ship it is always on points, which is considered near enough for practical navigation.
- Q. So that on steering your course south 71 east, and correcting 4 degrees, you do that by averaging between the point nearest to the south and nearest to the east on the compass?
- A. Yes, whatever deviation we would get on the nearest to that.
 - Q. The point nearest to that?
- A. Yes. I think, though, if I recollect right, that we had got some deviation on 73. That would be our usual course from Pt. Reyes down to the Light-

ship. If I remember right we probably had got some Azimuths on that course.

- Q. You got on your course, you say, at 4 o'clock—pardon me—what time did you say?
- A. I started to swing the ship on the starboard helm at 3:57.
 - Q. And what time did you get on your course?
 - A. I think about 4 o'clock. [686-565]
 - Q. Which way had you swung?
 - A. We had swung around on the starboard helm.
- Q. And what direction were you pointing when you started?
- A. To the west, or probably a little north of west when I started to swing.
- Q. So that you swung around in a semi-circle and got on your return course at about 4 o'clock?
 - A. About 4 o'clock.
 - Q. What speed were you making then?
- A. I started with a slow bell and then half speed; half speed when we got on our course. I run at half speed for a little while, until I sent the first officer to examine the collision bulkhead, and he reported back to me that everything was all right; it was some minutes after that when I went ahead full speed.
 - Q. Do you recollect how many minutes it was?
- A. I know what is in the log-book, and it seems to me that is about right, 7 or 8 minutes.
 - Q. 7 or 8 minutes, you say? A. Yes.
- Q. Would your log-book refresh your memory in that regard, Captain? A. Yes, sir.
 - Q. Just look at it. What was your first order to

the engine-room after 4 o'clock?

Mr. McCLANAHAN.—Q. Captain, did you make these entries in this log?

- A. No, I never make the entries in the scrap log.
- Q. Then how will the log refresh your memory?
- A. By seeing it here would refresh my memory.
- Q. But they were made by another man, were they not? A. By my orders.
 - Q. But made by some other man?
 - A. But by my orders, yes, sir. [687—566]
- Q. Then how would they refresh your memory if the entries had not been made by you?

Mr. DENMAN.—Q. They were taken down under your orders at that time, Captain?

A. They were taken under my orders at that time.

Mr. McCLANAHAN.—Would you let the witness answer my questions, Mr. Denman, and not answer them yourself?

Mr. DENMAN.—He is my witness.

Mr. McCLANAHAN.—Yes, but you can't answer the questions for him.

- Q. You must know, Captain, that in order to refresh your memory it must be done by some act that you yourself performed?
 - A. Well, I did not perform this act.
- Q. If it was performed incorrectly, and in disregard of your orders, it would not refresh your memory except erroneously, would it?
- A. But I do remember that it was 4:07 or 4:08, as I answered the question before.

- Q. Without refreshing your memory by what some other man did, you now remember it, do you?
- A. I know it must have been 4:07. I know it was 4:07 or 4:08 now that it is in the log-book, put there by my orders; it must have been 4:07.
- Mr. DENMAN.—Q. Now, Captain, taking the log, if it is necessary, how long did you continue under a full speed bell? A. Until 5:03.
- Q. Do you recollect the bells you ordered after that?
- A. I slowed the ship after that and I stopped her and then I went ahead half speed after that.
- Q. Were those maneuvers done under your direction? A. Yes, sir.
 - Q. Was the log made up under your direction?
 - A. Yes, sir. [688—567]
- Q. Were they entered in the log under your direction? A. Yes, sir.
- Q. Did you examine the log shortly after the trip on that day?

 A. No, I did not.
 - Q. Did you examine it coming in on that day.
- A. Coming down that day from the light-ship, yes, I examined the log, coming down from the wreck to the light-ship I examined the log.
- Q. But after that did you make any particular examination of it? A. No.
- Mr. DENMAN.—Mr. McClanahan, will you admit that the second mate will testify that these entries in the log-book, as to the time at which these various bells were given on the return voyage, would be as appears in the log?

San Francisco & Portland Steamship Co. 811 (Testimony of William Kidston.)

Mr. McCLANAHAN.—Has that not already been put in?

Mr. DENMAN.—I don't think so. I recollect that you put in these bells and you put them in only up to the return, but did not cover the remainder of that period.

Mr. McCLANAHAN.—Well, I will make that admission, but I do not care to admit that the captain can refresh his memory by inspecting the work of the second officer. If you want to get into the record that the second officer, if called, would testify that he made these several entries in conformity with the orders from the captain, all right.

Mr. DENMAN.—Very well. At 5:03 the log shows "slow ahead"; 5:04, "stopped"; 5:05, "slow ahead," "spoke Revenue Cutter 'McCullough'"; 5:10, "half speed"; 5:14, "slow speed"; 5:16, "stop"; 5:19, "light-ship abeam."

Mr. McCLANAHAN.—And I want the other entry after 5:19.

Mr. DENMAN.-5:19, "slow ahead."

- Q. On which side of your vessel did you pass the light-ship? [689—568]
 - A. On the starboard side.
 - Q. Did you see her clearly? A. Very.
- Q. And from the light-ship you came into the harbor and finished your home trip? A. Yes, sir.
- Q. Do you know if the log was read at the time of the collision? A. Yes.
 - Q. Was that reading reported to you?
 - A. Yes, sir.

- Q. What was reported to you?
- A. The log was hauled in immediately I gave the order to stop and go astern, and the reading of that log was reported 19.6.
- Q. How were these various orders regarding the speed of the vessel up to the light-ship executed?
- A. By telegraph. Now, I want to qualify that: Previous to ringing full speed ahead, at 4:07 as shown by the log-book, I had sent the first officer to report to me the condition of the collision bulkhead and if the ship was making any water. He said that the ship was not making any water, that the forepeak tank was still fresh water. Then I knew there was no volume of pressure from the outside to amount to anything. Then I thought I could risk giving her more speed, as it was essential for us to get in as soon as possible because it was coming on night; it was pretty thick fog down over the bar. I had sent for the Chief Engineer and I told him I was going to ring her up full speed, but for him not to press her too hard and see how the bow stood it. But it was by the telegraph to the engineer that the order was given for full speed.
- Q. And that is true of these other orders that are mentioned here in the log? A. Yes, sir.
 - Q. And they were executed? A. Yes, sir.
- Q. How long had you been off the bridge at the time that the [690—569] second officer reported to you the first whistle of the "Selja"?
 - A. Oh, I could not have been-I was not a minute.
 - Q. You were not a minute?

- A. No, I could not have been more than a minute.
- Q. Had you heard any whistle from the "Selja" prior to that time? A. No.
- Q. Two whistles were all the whistles that were heard of the "Selja" so far as you know?
 - A. So far as I know.
 - Q. What sort of whistles were they?
 - A. You mean in volume?
 - Q. No, in number?
 - A. Regular fog signal, one whistle.
 - Q. One whistle? A. Yes, steaming signal.
- Q. What would have been her signal if she had been lying dead in the water, and giving the proper signal?

Mr. McCLANAHAN.—I object to that question, to the latter part of it, "and giving the proper signal." There is no evidence here that she had not given the proper signal.

Mr. DENMAN.—This is a question addressed to an expert.

Mr. McCLANAHAN.—Oh, you mean what would have been the proper signal if the ship had been dead in the water—is that the question?

Mr. DENMAN.—Yes, that is the question.

- A. A vessel dead in the water should have blown under those conditions two whistles, two long blasts.
 - Q. Those are fog whistles, also? A. Yes, sir.
- Q. So there are two kinds of fog signal whistles from one vessel to another in the fog? A. Yes.
- Q. One is if the vessel is under way and the other is if she is stopped? A. Yes. [691—570]

- Q. It is one whistle when she is under way and two whistles if she is stopped; that is correct, is it?
 - A. Yes, stopped, without any headway.
- Q. After the collision did you have any conversation with Captain Lie on the bridge of the "Beaver"?
 - A. Yes, sir.
 - Q. Whereabouts did that conversation take place?
 - A. On the bridge of the "Beaver."
 - Q. Who was present?
 - A. The Second and Third Officers.
- Q. State the conversation, as near as you can recollect it, what you said and what he said.
- A. When Captain Lie came upon the bridge, he came up on the starboard side, and I met him at the top of the ladder and, being previously acquainted with the captain, I knew him before, I shook hands with him and expressed my feelings as regards being sorry that the accident occurred. I also inquired if he had any dry clothes, and he said yes, although he was shivering; that was natural, the man had been overboard and was wet and was shivering. I didn't quite believe he had changed all his clothes and I felt his breast to see if he had dry clothes on. While I was doing that he made the remark that he had heard my whistle for 15 minutes and he knew it was either the "Beaver" or the "Bear" by the sound of the whistle and—
 - Q. (Intg.) Did he say why he knew it?
- A. No, he did it. We met him in Portland and I presume he heard our whistle there. That is the remark he made, that he knew it was either the

"Beaver" or the "Bear" by the sound of the whistle, and that he had been lying at a standstill for over 10 minutes in the trough of the sea, and that he had taken a sounding.

Q. Did he tell you what the sounding was?

A. Yes, he said 35 fathoms. [692—571]

Q. Where did you go with the captain?

A. After the mate came on the bridge, after the First Officer came on the bridge, I took him down to my room to give him some heavier clothing.

Q. Did you have any conversation with him after

you went below?

A. Oh, yes, we were talking after we went down in my room.

Q. Was there further conversation on the bridge

also?

A. Yes, there was further conversation on the bridge, not much, though.

Q. What else did you talk about there?

A. He told me on the bridge that he had been up from 2 o'clock in the morning, that he made the land or got his soundings at 2 o'clock in the morning, and he had not got any sleep practically all night, and he had had a fog. That was some of the conversation. That is about all the conversation that I recollect up there. Down in the room he also talked about the collision. I told him he should be thankful for one thing, that his wife and two babies had been saved and that there was no loss of life to amount to anything.

Q. You say you had known the captain personally?

- A. Yes, I had met him in Portland.
- Q. How much water did your vessel draw on that day, Captain?
- A. We were drawing 14 feet 3 inches forward and 18 feet 6 inches aft.
- Q. Would you say she was light or heavy, was she running light or heavy?
 - A. She was medium draught.
- Q. How about the exposure of her wheel, was that near the surface or far below it?
- A. It takes 18 feet and 2 inches to cover her propeller; [693—572] the propeller was 4 inches under water; that is, lying alongside the dock, at smooth water.

(A recess was here taken until 2:15 P. M.)

AFTERNOON SESSION.

WILLIAM KIDSTON, direct examination, resumed:

Mr. DENMAN.—Q. Captain, have you ever noticed, in the course of your experience at sea whether there is any difference in the comparative distance shown by the log and the distance travelled by the ship when the vessel is going into a head swell as distinguished from a going or a following swell. Have you noticed any difference? A. Yes, sir.

- Q. What is the difference?
- A. Usually going into a head sea most patented logs, in fact every log I have been acquainted with, will overrun the ship.
 - Q. And how about the reverse case?

San Francisco & Portland Steamship Co. 817 (Testimony of William Kidston.)

- A. Generally they will under-run if the sea is heavy.
 - Q. When it is following?
 - A. On a following sea.
- Q. Have you ever heard the phrase used by sailormen of the coming home or setting home of the log?
 - A. Yes, quite frequently.
 - Q. What does that apply to?
- A. I think that the phrase originated at the time of the old chip log when they used to heave the log, the log would come home some with the strain of the line on it.
- Q. Under what circumstances, on a following sea? [694—573]
- A. Well, a chip log would come home with a strain on the log line in any kind of a sea. I am only saying now where I think the phrase originated.
- Q. How is the phrase used nowadays with the patent log they use?
- A. Well, they consider it just the same; they say the log coming home on a following sea, a light rotator coming home.
- Q. You said something about the unreliability of whistle sounds in fog in determining the source of the sound, that in the fog some sounds are unreliable; is that a matter of universal knowledge at sea?
 - A. Yes, sir, I would say it is universal knowledge.
- Q. Practically agreed upon by all sea captains so far as you know?
- A. So far as I know, everyone I have ever spoken to about it; it has been my experience.

(Testimony of William Kidston.)

Cross-examination.

Mr. McCLANAHAN.—Q. Captain Kidston, in the evidence taken in this case so far there has been much said on both sides about the point of collision; is it through inadvertence on your part or upon the part of your counsel that you have failed to say anything in your direct examination about the bearings that you took of Pt. Reyes and South End at the time of the collision?

- A. I have not been asked the question.
- Q. I ask you whether that is through inadvertence of yours or your counsel?
 - A. I think it must be of counsel.
- Q. You don't know why he has failed to ask you on that seemingly important question?

Mr. DENMAN.—He has already testified as to the distance.

A. No. sir.

Mr. McCLANAHAN.—Q. He has not talked with you or given [695—574] you any reason as to why he might refrain from asking you questions as to bearings? A. No, sir.

- Q. Do you remember taking the bearings?
- A. Quite well, yes, sir.
- Q. What were they taken for, captain?
- A. To fix my position.
- Q. What did you want to fix your position for?
- A. To return home; to return back to my dock. I wanted to know what departure to take from and what course to steer.

Q. You did not take the bearings with any idea of fixing the point of collision, did you?

A. Not primarily, no.

- Q. Did you have that in mind at all when you took the bearings, placing the point of the collision?
 - A. Well, I might say yes, I did.
- Q. What did you want to place the point of collision for?
- A. To be able to make my report to the Inspectors, as to where the collision occurred.
 - Q. Did you make your report to the Inspectors?
 - A. Yes, sir.
 - Q. Have you got a copy of it with you now?
 - A. No, sir.
 - Q. You did not keep a copy?
 - A. No, sir—oh, yes, I did keep a copy.
 - Q. What did you do with it?
 - A. I guess it must be home.
 - Q. Didn't you ever show it to Mr. Denman?
 - A. Yes, I showed it to Mr. Denman.
 - Q. Has he not got it?
 - A. I think he has a copy of it.
 - Mr. McCLANAHAN.—Please produce it.
- Mr. DENMAN.—It is in the Inspectors' Report there. (Indicating.)

Mr. McCLANAHAN.—Q. Is that a copy of your Report to the Inspectors, Captain?

A. Yes, I would say that that is an exact copy of my Report.

Mr. McCLANAHAN.—I will introduce it in evidence as Libelant's Exhibit 19 and I would like to

(Testimony of William Kidston.) have it copied into this record.

The COMMISSIONER.—That will be marked Libelant's Exhibit No. 19.

(Libelant's Exhibit No. 19 reads as follows:) [696—575]

Libelant's Exhibit No. 19 [Statement].
STATEMENT OF CAPTAIN WM. KIDSTON,
MASTER OF THE STEAMER "BEAVER."

Nov. 25, 1910.

U. S. Local Inspectors of Hulls & Boilers, San Francisco, Cal.

Gentlemen:

At 3:16 P. M. Nov. 22nd, bound from San Francisco to Portland, Pt. Reyes bearing NW.xW.½W., 6 Miles Mag. south end bearing NW.½N. 4 miles, the S. S. "Beaver" was in collision with the Norwegian S. S. "Selja," sinking the latter and doing considerable damage to the S. S. "Beaver's" stem and bow plating forward of collision bulkhead.

The S. S. "Beaver" left Pier 40 at 12:50 P. M. and proceeded to sea going out the North Channel. There was a light fog, but the land and buoys marking the channel, plainly in sight. After getting through the channel, we encountered a very heavy westerly swell, had a good departure from #2 Red Buoy and set our usual course S. 83° W. Bridge Compass. Mag. S. 86° W. to Duxberry Reef Buoy, which we passed ½ miles off at 2:15 P. M. Then altered course to N. 86° W. Bridge Compass (No deviation on this course) which course would take us $2\frac{1}{2}$ miles off Pt. Reyes

at this time, 2:15 P.M. The fog would lift and shut down so that we could only see about 1/2 a mile at times, and continued so until 3:00 P.M., when the fog shut in thick. I then sent written instructions to the Chief Engineer to slow the engine to 76 turns per minute. Our automatic fog whistle was blowing its usual blast of 5 seconds every minute; the lookout had been doubled. [697-576] On the bridge with myself was the Second Officer and a Quartermaster. I had stepped off the bridge for a minute to the toilet, which is at the foot of the bridge ladder. When I returned to the bridge the Second Officer reported that he had just heard a steamer's whistle a point on our starboard bow. I ordered the helm to starboard, thinking that I was overtaking a steamer on the same course or some steamer bound down for the North Channel. Our automatic whistle blew just then, and after it stopped, I heard the "Selja" whistle, and it sounded about a point on our starboard bow, although our head had swung a half point to port more than when we first heard her whistle. I then telegraphed to stop the engine and full speed astern. This was at 3:15 P. M., I ordered the helm hard-aport and blew three whistles. Although I had not seen the steamer, I made up my mind that she was crossing our bow, and with the helm hard-a-port and backing full speed, I was trying to stop the ship's headway, or get her head cantered enough to starboard to pass around her stern.

A few seconds later we sighted the S. S. "Selja" about two ship's lengths ahead and a little on our starboard bow, and heading right across our bow. It

was after we sighted the "Selja" that she answered our three whistles.

I saw that there was great danger of a collision and ordered the Second Officer to ring the telegraph two or three times for full speed astern; this was to notify the engineer that I wanted all the power he had to back. Our head was swinging very fast to starboard and I thought we were [698-577] going to swing clear, but just as we had lost our headway, but had not gathered any sternboard, the "Selja" being in the trough of the swell and our head pointing just forward of his midships, she was lifted on a big swell and carried hard against our stem. and as the "Beaver" came down with the swell she crashed through the side of the "Selja," going into her about 10 or 12 feet. This was at 3:16 P. M. I stopped the engines, thinking to keep the "Beaver" in the hole, but she gathered sternway and backed away from the other steamer. I saw that the "Selja" was doomed and sounded the crew to Boat Stations. Boats were all cleared away and two lowered and sent rescue the crew of the "Selja." Bilges were sounded and forepeak examined, found that ship was not making any water. The S. S. "Selja" sank head first in ten minutes from the time she was struck. She sank in 30 fathoms of water, and when her bow struck the bottom, she was almost straight on end with her stern sticking out of water about 100 feet. Then she gradually turned bottom up and sank. We rescued the captain's wife and two children and all the crew except two Chinese.

Our boats searched around after the "Selja" sank,

(Testimony of William Kidston.)
not finding the missing Chinese. I ordered the boats
back to the "Beaver," had them hoisted on board
and proceeded back to San Francisco, arriving at
Pier 40—6:30 P. M.

Yours respectfully,
(Signed) WM. KIDSTON,
Master S. S. "Beaver."

Subscribed and sworn to before me, O. F. Bolles, U. S. Local Inspector, at San Francisco, Cal., this 25 day of Nov., 1910. [699—578]

Mr. McCLANAHAN.—Q. By "Inspectors" you mean the United States Inspectors?

A. Yes, sir, the United States Inspectors of Hulls and Boilers.

- Q. Messrs. Bolles and Bulger? A. Yes, sir.
- Q. What is their jurisdiction over you?
- A. They hold all jurisdiction over me regarding any accident that may occur, whether I was in the right or wrong; they have the right to revoke or to suspend my license.
- Q. So that you felt, at the time of the collision, that there would be an investigation by these gentlemen and the blame fixed by them, so far as you were concerned?
- A. I was sure of it. I am compelled by law to report to them.
 - Q. And this report has to be sworn to?
 - A. Yes, sir.
 - Q. And you swore to it, did you? A. Yes, sir.
 - Q. And it is a truthful report of the matters set

(Testimony of William Kidston.) forth therein? A. Just as I saw it.

- Q. I believe I handed you that report just a minute ago, or a copy of it; you read it through, did you?
 - A. I did, I read it through.
 - Q. And it is correct? A. Yes, it is correct.
 - Q. You don't care to make any changes in it?
 - A. None whatever.
- Q. What time, Captain, did you take your bearings referred to in the Report as the point of collision?
- A. About 10 minutes after the collision, 10 or 15 minutes after the collision.
- Q. That was before the "Selja" had sunk, was it not?

 A. She was about going down then.
- Q. And you stopped at that time when the "Selja" was going down, to take the bearings for the purpose of making out a [700—579] Report or a statement to the inspectors?
- A. The "Selja" had sunk head first. Her stern had not disappeared. It was after I had spoken through the megaphone to one of our boats to go around the stern of the "Selja" and pick up some men I saw swimming on the other side of the "Selja"—the officer in charge of the boat said he was afraid to go around the stern of the boat for fear he would be sucked down by the suction; I told him there would be no suction, for him to go around the stern as close as he could so as to get these men before they would be exhausted. Then I went around to the compass, I saw the fog had cleared and I took the

bearings; as near as I can place that in my mind it was about between 10 and 15 minutes after the collision.

- Q. You did not figure out the distance at the time that you were from Pt. Reyes or from South End?
 - A. No, sir.
 - Q. You saw Pt. Reyes clearly, did you?
- A. Yes, I could see the lower point; the fog did not lift high enough for me to see the lighthouse on top, but I could see the lower point.
- Q. At the time you took the bearings, what way was your vessel heading?
- A. She was heading with the swell, a little on her port bow, so that would make her probably a little north of west that she was heading at that time.
 - Q. How did you get in that position?
 - A. I could not tell you how she got in that position.
- Q. Do you mean to say that after the collision the swell was striking the port side of your ship?
 - A. The port bow.
 - Q. The port bow, after the collision?
 - A. Yes, sir, after the collision.
- Q. Immediately after—after you had backed away from the "Selja"? [701—580]
- A. After we had backed away from the "Selja" the swell was striking us pretty near forward of the beam.
 - Q. What beam? A. The port beam.
- Q. Which way was the "Selja" headed at that time?

- A. At the time when she was sinking, right into the swell.
- Q. No, not at the time she was sinking, but at the time you backed away from her?
- A. She was pretty near into the swell then, pretty near head into the swell.
 - Q. So that her stern was at your port beam?
 - A. No, I did not say so.
- Q. If the swell were striking your port beam and the "Selja" was headed into the swell, her bow would be away from you, would it not, and her stern pointed toward your port beam? A. No, sir.
- Q. Well, what was the situation? Which way was her bow pointing with reference to the way you were lying? I prefer not to have you use the models, Captain, because that cannot go into the record.
- A. Well, I was only going to do that so as to make it plainer to you.
- Q. You can use the models and make it plain in English as well.
 - A. If the swell were here you—
- Q. (Intg.) You see, Captain, we cannot get "here" into the record. The swell was striking—
- A. (Intg.) The swell was striking a little forward of the port beam of the "Beaver" and the "Selja" was heading about into the swell. Now, that is as plain as I can make it to you, unless I can demonstrate it to you.
- Q. Was that the location of the boats after you had made your maneuver and backed away from the "Selja"?

San Francisco & Portland Steamship Co. 827
(Testimony of William Kidston.)

- A. We backed straight away from the "Selja."
- Q. And then didn't you swing?
- A. Yes, we swung after a [702—581] little while but not right away.
 - Q. After a little while which way did you swing?
 - A. We commenced to swing to port.
 - Q. To swing to port? A. To swing to port.
 - Q. That is, your bow began to swing to port?
 - A. Our bow began to swing to port.
- Q. I want to read you from this report, which you have verified—made to the inspectors. You say that after getting through the channel—I suppose you refer there to the North Channel?
 - A. Yes, sir.
- Q. You say "We encountered a very heavy westerly swell, had a good departure from No. 2 Red Buoy and set our usual course south 83 degrees west, bridge compass, magnetic south 86 degrees west to Duxbery Reef." Is that correct? A. No, sir.
 - Q. What is that?
 - A. No, sir, that Report does not read that way.
- Q. Read it over, Captain, and see if it does not read that way (handing to witness Libelant's Exhibit 19.)
- A. "We encountered a very heavy swell—westerly swell; had a good departure from No. 2 Red Buoy and set our course south"—
 - Q. Is not the word "usual" there?
- A. "And set our usual course south 83 degrees west, bridge compass." That is correct.
 - Q. Go on.

- A. "Magnetic south 86 degrees west to Duxbury Reef Buoy." There is a misprint there; I acknowledge that.
- Q. What is a misprint? You mean that your Report is wrong, don't you? There is no misprint, is there? [703—582]
- A. Well, there is no occasion for that south 86, because south 83 degrees west, bridge compass, is magnetic. I did not notice that in there before. That was intended for north 86 west from Duxbury.
- Q. Then, if you will follow your Report a little later on you say: "Then altered course to north 86 west, bridge compass."
 - A. From Duxbury, that is correct.
 - Q. But what about the south 86 west?
 - A. That never was steered.
 - Q. And your Report is wrong in that respect?
- A. In that respect, south 86. We did alter one degree, we steered south 83 and then south 82 before we got to Duxbury.
- Q. Now, are you sure you steered south 83 and then south 82? A. Yes, sir.
 - Q. But you never steered south 86 west magnetic?
 - A. No, we never steered south 86 west magnetic.
 - Q. In that respect then, your Report is wrong?
- A. In that respect it is wrong. I don't know how that crept in there; I never noticed that before.
 - Q. When did you draught this report?
 - A. The day after we arrived.
 - Q. That would be the 23d?
 - A. That would be the 23d.

- Q. Now, you say in your Report that you passed Duxbury at 2:15, half a mile off. Did you see Duxbury? A. I did not.
 - Q. Did you hear it? A. Yes, I heard the buoy.
- Q. What made you say it was half a mile off, could you tell its distance?
- A. Well, I said that from our usual courses steered on that particular run of seven miles and hearing the whistle so plainly, as I heard it I judged it was half a mile off. [704—583]
- Q. So you did place some reliability in your ability to judge of the whistle of a bearing in the fog, did you not?
- A. Well, I had been over that course so often, that is the reason I placed that reliance in it, and I heard that whistle so often, that that is why I judged where we were.
- Q. You say that this subsequent course of north 86 west, bridge compass, no deviation, would take the "Beaver" $2\frac{1}{2}$ miles off Pt. Reyes?
 - A. That is where she should run, yes, sir.
 - Q. That is correct, is it?
 - A. Yes, sir, that is what that should have done.
- Q. Do you remember testifying before the Inspectors in regard to the matter of where your course would take you off Pt. Reyes? If not, let me refresh your memory.
- Mr. DENMAN.—Whereabouts is it in that testimony, Mr. McClanahan?
- Mr. McCLANAHAN.—I cannot tell you, I have only an excerpt.

- Q. Do you remember this question being asked you by the Inspectors:
 - "Q. Did you know when you were taking Pt. Reyes in line with Duxbury Reef how far off shore you were?
 - A. Quite a distance off South Point; we would be 3 miles—3 miles and a half.
 - Q. How much would that be in line with Pt. Reyes to the Heads—North Heads?
 - A. It would be over a mile and a half off the land that is on that line.
 - Q. In a straight line you would be a mile and a half off Pt. Reyes at the time of the collision?

 A. Yes, sir,"

Do you remember that tesitmony? A. Yes.

- Q. Is there any conflict between that testimony and the Report which you made where you said Pt. Reyes would be $2\frac{1}{2}$ miles [705—584] on that course?
- A. If the answers to the questions are there as I gave them it was a wrong impression that I had. I distinctly remember the Inspector putting that question to me. What I understood by that question was what would be the closest land to be on that course until I got to Pt. Reyes.
- Q. The question is as follows: "Q. In a straight line you would be a mile and a half off Pt. Reyes at the time of the collision? A. Yes, sir."
 - A. Oh, I never said such a thing in my life.
 - Q. You never said such a thing?

A. No, I never said such a thing; if I did I never meant that.

- Q. Don't let us be too positive, Captain. This question, taking it in conjunction with the context, I believe means that if your course line had been extended, that its extension would be a mile and a half off Pt. Reyes; is that what you now say is incorrect?
- A. No, not at all; if my course had been extended I meant we would be $2\frac{1}{2}$ miles off Pt. Reyes when Pt. Reyes would be abeam.
- Q. And you deny that you said that in a straight line you would be a mile and a half off Pt. Reyes at the time of the collision—is that what you deny?
 - A. I never meant anything of the kind.
- Q. Have you since platted that course of north 86 west, bridge compass, no deviation, to see whether its continuance would bring you 2½ miles off Pt. Reyes?
 - A. T have.
 - Q. And your statement is confirmed, is it?
 - A. Yes, sir.
- Q. Did you plat it before you made the statement, the sworn statement to the inspectors?
- A. Well, at that time I had platted it when I set the course for that distance.
- Q. That is when you set the course north 86 west? [706—585]
- A. North 86 west. I had laid the course on the chart and I knew that is where it would bring her off.
 - Q. At the time, on the ship?
 - A. At the time, on the ship.
 - Q. I want to now examine you, Captain, on the

question of the conversation you say you had with Captain Lie on the bridge. I want to be perfectly fair with you so that you may know what you are saying in answer to my questions. I first want to ask you whether you are familiar with what may be called the two whistle rule when a vessel is dead or done in the water?

A. T know what the rule is.

- Q. What article is that to be found in of the International Rules?
- A. I cannot tell you the number of the article. I know what the rule is.
- Q. You also know what the other rule is with reference to fog-signals? A. Yes, sir.
 - Q. What article is that to be found in?
- A. I cannot tell you what the number of the article is.
- Q. I understand that Captain Lie told you that he had been at a standstill in the trough of the sea for more than 10 minutes; is that a correct statement of what he said?
- A. At a standstill in the trough of the sea for more than 10 minutes; that is correct.
- Q. You believe Captain Lie to be an efficient seaman, do you not?
 - A. I have no way of judging Captain Lie.
- Q. You have no way of judging him. When you speak of your vessel stopped in the water, what do you say about it, how do you characterize that situation?
- A. The ship's headway is stopped and she is lying dead in the water.

- Q. Is that it?
- A. She is stopped in the water. [707—586]
- Q. And dead in the water? A. Yes, sir.
- Q. Any other expression? No way on her?
- A. Well, she would not be stopped, in my estimation, if she had any way on her, either ahead or astern.
- Q. Yes, I know that; I am suggesting to you characteristics of that situation; she would have no way on her?

 A. She would have no way on her.
 - Q. She would be at rest?
- A. No, she might not be at rest, she might be rolling or she might be pitching.
- Q. If she were rolling or pitching would you say that the two-whistle rule applied if she had no way on her?

 A. You bet I would.
- Q. So you would charecterize that situation by that expression, would you not, that she was at rest in the water, she had no way on her?
 - A. I would not say "rest"?
 - Q. You would not say "rest"? A. No.
 - Q. Why not?
- A. Because that is a term I would not think of making use of. I never have heard it made use of.
- Q. What are the terms you would make use of, if you wanted to characterize the situation?
 - A. That I was dead, stopped, no headway on.
- Q. Just those two terms—no, those three terms, "dead, stopped, no headway"?
- A. That I was dead, stopped, and without any headway.

- Q. Dead, stopped, and without any headway?
- A. Yes, sir.
- Q. What is the expression which the rule uses?
- A. Generally stopped, without any headway; that is the general expression.
 - Q. I am speaking of the rule itself?
 - A. Oh, in the article?
- Q. Yes, in the article—what is the expression used there to [708—587] characterize the situation?
- A. When your engines are stopped and the ship has no headway—without headway—as near as I can remember; engines stopped and the ship without any headway.
 - Q. That is your remembrance of the rule?
 - A. That is my remembrance.
- Q. Did you ever hear or see a master characterize that situation by the use of the word "standstill"?
- A. Oh, very often; very often I have heard that used.
 - Q. And yet you would not use it?
 - A. I might, on occasions; I don't know; I might.
- Q. Captain, have I wasted all this time trying to get from you what you would use and now you say you might use something else?
 - A. I don't think you put it to me that way.
 - Q. Well, then, I am at fault; I tried to, did I not?
 - A. I don't think so.
- Q. As a seafaring man you might use the word "standstill"? A. I might, yes, sir.
- Q. Do you remember clearly the evidence at the hearing before the inspector?

- A. I think I do; I would not be positive.
- Q. Do you remember that Captain Lie was there?
- Q. When Captain Lie was on the bridge and told you that he had been at a standstill for more than 10 minutes, he was then in your opinion convicting himself of a great fault for not blowing two whistles, was he not? A. He was.
- Q. Because if he had blown two whistles your conduct might have been different? A. Entirely. [709—588]
- Q. I do not remember that you referred to this fault of Captain Lie's, when he stated it to you?
 - A. No, sir.
 - Q. Why not?
- A. Well, Captain Lie had just lost his ship, Mr. McClanahan, and he was feeling pretty bad and pretty nervous over it; I knew that it was a great fault and I didn't wish to make him feel any worse than he was, and rub it in on him at all. That is one reason why I did not refer to it.
- Q. So you did not say to him, "you ought to have blown two whistles" because out of sympathy for him you felt that it might hurt his feelings?
- A. Well, I didn't care to be telling him where I thought he was wrong; I was not his judge.
- Q. Subsequently, Captain Kidston, you were in a way put on trial, were you not?
- A. I don't quite understand your question; do you mean the investigation before the inspectors?
 - Q. Yes.

- A. I don't know whether I would call that a trial, it was an investigation.
- Q. You were the only man interested personally in that investigation?
 - A. So far as the inspectors were concerned, yes sir.
 - Q. And it meant perhaps the loss of your license?
 - A. It might.
- Q. So that that investigation was a matter of very great personal interest to you?
 - A. It certainly was.
- Q. In ascertaining where the fault, if any, for that collision lay; that was the purpose, was it not?
- A. No, the investigation of the inspectors was solely to find out what I had done. They never asked me any question about the other man. It was to find out if I had complied with the regulations called for in the navigation of a ship in a fog. [710—589]
- Q. So that the question of whether you ran down the "Selja" and sunk her through the fault of the master of the "Selja" you don't think was under investigation at that hearing?
- A. There never was any question about that asked me.
 - Q. That it was not?
- A. They never asked me anything about the other captain.
- Q. If it had been shown that the other master was grossly at fault you would have been exonerated, would you not? A. I was exonerated.
 - Q. Answer my question. A. I presume so.
 - Q. Do you remember that at that hearing Captain

Lie had read in your presence his log signed by himself and sworn to by himself?

Mr. DENMAN.—Where does that appear in the record, that he read it?

Mr. McCLANAHAN.—I say had it read.

Mr. DENMAN.—Does that appear in the record?

Mr. McCLANAHAN.—Yes.

Mr. DENMAN.—Where does it appear?

Mr. McCLANAHAN.—Q. Well, whether it appears in the record, or not, do you remember that that was done?

A. I remember there was a paper read purporting to be a copy of his log.

Q. And that paper is in evidence in this case, is it not, or do you know?

A. I don't know; I have never seen it.

Q. Before proceeding with this matter of the hearing I would like to ask you another question: did you, when Captain Lie told you that he had been dead in the water for more than 10 minutes, believe him? [711—590]

A. That he had been stopped dead in the water for over 10 minutes, I certainly did believe him.

Q. You certainly did believe him? A. Yes.

Q. In spite of the fact that just immediately prior to the collision the maneuvers of your vessel had shown to you—not the maneuvers but the whistle of the "Selja" had shown to you, as you believed, that she was moving ahead?

Mr. DENMAN.—I don't think there is any testimony to that effect.

A. One whistle signified to me that she was under way.

Mr. McCLANAHAN.—Q. And that was a point on the starboard bow?

- A. That is what was reported to me.
- Q. And the next whistle was still a point on the starboard bow, although your head had swung one-half point to port? A. Yes, sir.
 - Q. What did that indicate?
- A. That indicated that the bearing could not have been correct, and I did not know whether, when I heard the one whistle myself—I did not know whether he was coming down parallel with me, or not, but that he was very close and that he was under way; it sounded so close to me that my only object then was to try to get the headway off the ship.
- Q. So the second whistle conveyed to you the idea that he was under way?
 - A. That he was under way.
- Q. Did you attempt to reconcile Captain Lie's statement that he was at a standstill in the water for 10 minutes with your prior belief that he was under way as ascertained from the whistle you heard?
- A. No, but from the condition that I saw him in when he came out of the fog—
- Q. (Intg.) Just answer the question, Captain. Read it to him. [712—591]

(Question read by the Reporter.)

- A. No, not by that.
- Q. They were irreconcilable, those two statements?
- A. Yes.

- Q. And you did not call his attention to that?
- A. No.
- Q. When you testified before the inspectors did you still believe Captain Lie's statement that he was at a standstill 10 minutes before the collision?
 - A. I did.
- Q. You were asked this question by one of the inspectors, were you not:
 - "Q. Did she"—referring to the "Selja"—
 "appear to have any way on her, the other ship?
 - A. That I could not judge very well. Our head was swung to starboard so fast that I could not tell whether the other ship had any headway or not."

And then in another place, as follows;

- "Q. You think if the 'Selja' had headway and continued on her course, you would have gone clear of her?
- A. Yes, I would have done what I started to do, go around her stern.
- Q. Did you think that she was under headway? A. I did.
 - Q. What signals did you get from the 'Selja'?
 - A. One blast, that she was under headway.
 - Q. You understood it that way? A. I did.
 - Q. You figured she was across your bow?
- A. After my head had swung that half point I then knew that she must be crossing my bow."

Why, didn't you, when you had the opportunity in that line of examination, refer to this conversation with Captain Lie on the bridge?

- A. Well, there were no questions asked me, Mr. McClanahan, that would bring that answer out from me. [713—592]
- Q. The very matter in controversy was there referred to, that is, the headway of the "Selja" and yet you refrained from saying anything about your belief based on Captain Lie's statement that she was at a standstill for more than 10 minutes?
 - A. That is correct, I did not.
 - Q. Why didn't you?
- A. I have given you the reason, because the question was never asked me.
- Q. Were you still solicitous for the unfortunate captain?
- A. No, I was not at all, I was thinking more of myself at that time.
- Q. Would it not have been entirely appropriate for you at that time, when you were asked as to the headway the "Selja" had on, for you to have said that she was dead in the water, or at a standstill for more than 10 minutes, according to Captain Lie's statement to you? A. It might have been.
- Q. What is your reason for refraining from making that statement?
- A. I have answered you, Mr. McClanahan, because the question was not asked me.
- Q. Very well, we will drop it right there. You remember this evidence that I have read to you, do you not?
 - A. Yes, I partially remember that evidence.
 - Q. Captain Kidston, you also know that Captain

Lie was put under oath and examined at that hearing, do you not? A. Yes, sir.

- Q. Did you hear Captain Lie make these answers to these questions:
 - "Q. Were you stopped when you heard the whistle of the other ship?
 - A. Just stopped. I saw 'Beaver' as he blowed three whistles. Could just loom him. I could not make out way he was heading.
 - Q. How long had you been stopped [714—593] when you heard the whistle of the 'Beaver'? A. 5 minutes.
 - Q. Was your ship dead in the water at that time?
 - A. I was looking over the side. She had a little headway. The sea was astern and she had headway and I did not want to blow two whistles before she was done.
 - Q. She still had a little way on?
 - A. Yes, sir. Nothing to speak of. I was just on the moment of blowing two whistles when he loomed up.
 - Q. If you were stopped 5 minutes why didn't you blow two whistles?
 - A. Because she was going ahead yet.
 - Q. When the engines are stopped, does the law say you shall blow two whistles? A. No.
 - Q. Your vessel is practically stopped at that time?
 - A. No, as soon as my vessel has headway I cannot blow two whistles.

- Q. Your engines were stopped 5 minutes and you still had headway on the ship?
 - A. Yes, sir.
- Q. How fast were you going through the water?
- A. 3 or 4 knots. She would not slow herself in 5 minutes. She will only swing around, a tramp like that. Her power astern is not full enough.
- Q. You did not consider it necessary to blow two whistles that your engines were stopped?
- A. I just told the Third Officer to hold on the two whistles until I told him.
 - Q. Was she on the point of stopping?
- A. As I said before, when I blowed three whistles I was then at the point of blowing two whistles to show that I had stopped; then the steamer loomed up and she blowed three whistles at same moment, then I backed engines and blowed three whistles.
- Q. Why didn't you back when you heard the vessel approaching? [715—594]
- A. Because I was still—I was just moving a little. Too, I was navigating as carefully as I could because I did not want to alter my course on a whistle. I never alter my course on a fog whistle. I would sooner stop my vessel. I could see three ship-lengths. I was quite certain I could stop my vessel before the other would run into me, if she was in same speed.
 - Q. Do you think if you had blowed those two

whistles when you stopped it would have avoided the collision?

A. I don't know.

- Q. How many whistles did you hear on the 'Beaver'?
- A. I heard nearly 15. I heard whistle of 'Beaver' at 3 o'clock.
 - Q. How long after that did you stop?
 - A. I stopped 10 minutes later.
- Q. When you heard that whistle, if you had given two whistles that you were stopped, do you think the collision would have been averted?
- A. I don't know, because I could not blow two whistles.
 - Q. You could blow your fog-signals?
 - A. Yes, sir.
- Q. When you blow fog-signals you are under way? A. Yes, sir.
- Q. When you blow two whistles you are stopped? A. Yes, sir.
- Q. When you blow two whistles your ship is stopped through the water?
- A. Yes, sir. That means the ship is done in the water.
- Q. How long would she run after your engines were stopped?
- A. About 5 minutes. I was going to blow three whistles. I gave three to back her. She was stopped at the moment I gave three whistles.
- Q. When you stop your engines dead still, you are virtually stopped?
 - A. We are not allowed to blow as soon as we

stop our engines. We may be going 15 or 20 knots."

Do you remember that testimony?

- A. Partially; I cannot remember all the testimony.
- Q. Practically though it refreshes your mind? [716—595]
 - A. There is a good deal of it there that I remember.
- Q. Now, hearing that testimony, you knew that it was in direct conflict with the conversation or the statement made to you on the bridge by Captain Lie, and in direct conflict with your belief in the truth of that statement, did you not?
- A. I knew it was in conflict with what he told me, yes, sir.
- Q. Why did you not refer the matter to your attorney, who was then present looking after your interests? A. I did not.
- Q. You did not, and you have no reason now to give why you did not?
- A. I have already given you the reason, that I was not asked the question to bring that answer out.
- Q. We have passed your examination, Captain, and are now on the examination of Captain Lie—in a measure your opponent at the hearing; why did you not refer this discrepancy, which you knew to exist, to your then attorney sitting by your side at the hearing?

Mr. DENMAN.—Where does it appear that he is the opponent?

Mr. McCLANAHAN.—Oh, that was facetious? A. Well, I did not, that is all.

San Francisco & Portland Steamship Co. 845 (Testimony of William Kidston.)

Q. And you have no reason to give for not doing so?

Mr. DENMAN.—He has given his reasons three or four times.

A. The only reason is—you have asked me why I did not say something to Captain Lie about it at the time and I have given my reason for it at that time; the next time is when it was brought out at the hearing, I didn't say anything about it because I was not asked any question.

Mr. McCLANAHAN.—Q. Now, the third time when you heard Captain Lie make a flat contradiction of what you say he said on the stand, what was your reason for not calling your attorney's attention to it so that he might bring it out at [717—596] the hearing. Of course, Captain, you may not have any reason, and if you have not say so; and if you have any reason I want to know what it was.

A. I was being tried or investigated by the inspectors for my actions, not for Captain Lie's. They never asked me any question in regard to Captain Lie and it never came out.

- Q. And that is your reason?
- A. That is my reason.
- Q. You heard also the Third Officer of the "Selja" testify at that hearing, did you not?

A. One of the officers, I think he was the Third Officer.

Q. Do you remember his testimony as follows:

"Q. Was your vessel stopped before the collision?

- A. Yes, sir, it was dead slow. Asked captain if I should give two whistles but captain said he is going little ahead because there was heavy swell from astern.
 - Q. She was forging through the water?
- A. She was moving little ahead. I asked captain if I should blow two whistles; he said no, as she had way on.
- Q. How long time was it from the time your ship stopped her engines until the collision occurred?
- A. It was stopped about 3:10. Collision occurred at 3:15 or 3:16.
- Q. What speed was 'Selja' going when engines stopped?
 - A. Not very much. She was dead slow.
 - Q. How many knots would that be?
 - A. I should judge 3 or 4."

Do you remember that evidence?

- A. Well, it is the same as the captain's; I remember portions of it.
- Q. Have you any reason for not referring the discrepancy as disclosed by that evidence to your attorney?
- A. I have not, any more than I have said. [718—597]
- Q. Your attorney at that time was Mr. William Denman? A. He was the attorney.
 - Q. He was your attorney at that hearing?
 - A. He was.
 - Q. And he is the same William Denman who repre-

sents the claimant in this case? A. He is.

- Q. I suppose, Captain, that most of the facts pertaining to the collision were furnished by you to the claimant's proctors?
 - A. The principal facts, I imagine.
- Q. You understand that this case is not a case in which you alone are interested, but it is one in which both parties are interested, in placing the fault for this collision; you understand that, do you not?
 - A. Yes, sir.
- Q. Did you furnish most of the facts with reference to the collision found in the answer filed in this case? A. I do not know.

Mr. DENMAN.—There is no evidence here showing that the Captain has ever seen the answer.

Mr. McCLANAHAN.—Well, we can show him a copy of it if he wants to see it.

- A. That is what I was going to say, that I never saw it and don't know anything about it.
- Q. Well, if you have any curiosity in that regard we will gratify it now; I will show you the answer. Of course, you could not testify that you furnished the facts unless you saw what the facts are that are set out in the answer. Take time to read the answer, Captain, so that we will see that you are perfectly familiar with the facts contained in it. (Handing.) You are reading the wrong answer, Captain; you have just now read, Captain Kidston, the answer of the San Francisco & Portland Steamship Company, respondents, in the suit brought [719—598] against it by the Portland & Asiatic Steamship Com-

(Testimony of William Kidston.)
pany, the Libelant, for freight?

A. Yes, sir.

- Q. Will you please now read the answer in the original suit brought by Olaf Lie vs. The Steamship "Beaver"? You have read that answer, have you, Captain? A. I have read it.
- Q. You note in there that it is alleged that the "Selja" was allowed to stop in the water for many minutes, as claimant is informed and believes, and therefore alleges at least 5 minutes. You noticed that allegation, did you?
 - A. Yes, I think I remember seeing that.
- Q. Where did that allegation come from—the fact upon which it is based?
- A. I don't know. It might have come from me or from one of the other officers or crew of the ship. I don't know where it came from.
 - Q. What is it based on, do you know?
- A. It may have been based on something I told Mr. Denman; I don't know what it is based on.
- Q. You know what I am trying to get from you, Captain—is it based on the conversation that you had with Captain Lie on the bridge? A. Oh, oh—

Mr. DENMAN.—I object to the question because it calls for the opinion of the witness; there is no evidence at all that he knows anything at all about the drawing of the answer.

Mr. McCLANAHAN.—Q. Answer the question, Captain.

- A. This paper that I have just read here, this is the first time I have ever seen it.
 - Q. Well, you have read it, and you know the facts

stated in the paper. Now, I have stated one of the facts, and now I ask if that fact is based on your understanding of the conversation held on the bridge? [720—599]

Mr. DENMAN.—Objected to as calling for the opinion of the witness as to what their pleading was based on, he having had nothing to do with the drawing of it.

Mr. McCLANAHAN.—Answer the question, Captain. A. I don't know.

- Q. You don't know where that came from, that 5-minute reference to the "Selja" being stopped?
- A. So far as this statement is concerned, I don't know where it came from.
- Q. A 5-minute stoppage of the "Selja" prior to the collision is something that you know nothing about?
 - A. Something I have heard.
 - Q. From whom?
- A. From Captain Lie, I think, in his testimony before the inspectors, I think, if I am not mistaken. Didn't he say that before the inspectors?
- Q. He said before the inspectors, and I am not attempting to quote his words, that his engines were stopped at 3:10; that would be 5 minutes before the collision? A. Yes.

Mr. DENMAN.—I object to that, because it does not show the whole of what he said before the inspectors. He put in his log there showing that he had stopped still for 5 minutes. If you are going to summarize statements made before the Inspectors, Mr. McClanahan, I submit that you must have the

(Testimony of William Kidston.) whole of them go in.

Mr. McCLANAHAN.—The whole of what?

Mr. DENMAN.—The whole of his statements. For instance, he stated in his log that he handed into the inspectors that he was standing almost dead still for at least 5 minutes.

Mr. McCLANAHAN.—Q. I am referring to the allegation in the answer that the "Selja" was at a dead stop in the water [721—600] for at least 5 minutes before the collision; now, Captain Lie did not make any such statement as that before the inspectors. Do you know of any other place where you heard that 5-minute suggestion?

- A. No, not when you put the question that way. I don't know anything about any 5 minutes dead stop.
 - Q. You don't know anything about it?
 - A. Not about any five minutes dead stop.
- Q. You don't know of any source where that might have been obtained?
 - A. I don't know where it was obtained.
- Q. Did you ever tell Mr. Denman about this conversation on the bridge? A. Yes, sir, I did.
- Q. And didn't you tell him that portion of it where Captain Lie is said to have said that he had been dead in the water for more than 10 minutes?
- A. For more than 10 minutes, yes; not 5, but for more than 10.
 - Q. For more than 10 minutes? A. Yes, sir.
- Q. Were you cognizant of the fact that some of the officers of the "Selja" were to have their depositions taken preparatory to departing for Norway?

San Francisco & Portland Steamship Co. 851
(Testimony of William Kidston.)

- A. I don't think I knew anything about it until after the depositions were taken. I don't remember.
 - Q. You were in the city, were you?
 - A. I was in the city.
- Q. Had you conferences with Mr. Denman prior to the depositions of the officers of the "Selja" being taken?

Mr. DENMAN.—Do you some specific conference, Mr. McClanahan?

- A. I had not had any conference with Mr. Denman from about the time of the investigation before the inspectors until along after the middle of May, I think it was. I never was to his office more than once or twice before that, I don't think. [722—601]
- Q. Did you, at the conference first referred to, namely, the one approximately near the time of the inspectors' hearing, did you then tell him the facts of the collision as you understood them?
 - A. I think I did.
- Q. And you think you told him, of course, about this important conversation on the bridge?
 - A. I think I did.
- Q. Well, now, take my word for it, Captain Kidston; at this hearing at which the depositions of the officers of the "Selja" were taken there was introduced the engineer's log showing the bells received in the engine-room, and the maneuvers of the engines; and there was testimony given by each of the officers of the "Selja," and cross-examination or opportunity for cross-examination, and yet not one word was suggested about this 10 minute or more stoppage of the

"Selja" before the collision; do you know why that was omitted at that time? A. I do not.

- Q. You have no reason for it?
- A. None whatever.
- Q. And you don't know why your counsel omitted it? A. I do not.
- Q. Coming back to the day of the collision, I will ask you whether there was any fog at the time you left the port of San Francisco?
 - A. A light haze, a high, light haze.
- Q. You were not blowing your whistle inside the harbor? A. No.
 - Q. What time did you leave your dock?
 - A. I think it was about 12:50 P. M.
 - Q. Is that your regular time for leaving?
 - A. No; 12 o'clock is our regular time.
 - Q. You were late that day, were you?
 - A. We were late.
 - Q. 50 minutes late?
 - A. About that. [723—602]
- Q. You have a regular schedule, have you not, Captain, to make with reference to time? You leave here at a certain time and are supposed to be due at Portland at a certain hour? A. No, sir.
- Q. Have you no instructions at all from your owners as to that run, with reference to time?
 - A. No, not with reference to time.
- Q. Have you any instructions with reference to speed?
 - A. None from San Francisco to Portland.
- Q. Have you any instructions with reference to course?

A. None with the exception of distance off of headlands, that is all.

Q. What do you mean by distance off of the headlands, how far you shall approach headland?

A. Yes, sir.

Q. Nothing with reference to how near you shall run to the shore?

A. I have just said, with reference to headlands.

Q. And only with reference to headlands?

A. Yes, sir.

Q. No instruction with reference to any other portion than headlands? A. Points.

Q. What is that instruction?

A. That we must not come within a certain distance of certain points which are considered dangerous.

Q. You are at liberty, then, to shape your course otherwise as you deem best? A. Yes, sir.

Q. When did you first, on November 22d blow your fog-whistle?

A. I cannot remember; previous to getting to Duxbury Reef.

Q. Did you not blow it while you were in the North Channel?

A. Not at all. It was quite clear in the North Channel, except, as I say, a haze.

Q. But before you got to Duxbury Reef you began to blow your fog-whistle? [724—603]

A. We began to blow it then.

Q. At that time how far could you see through the fog, when you first started your whistle?

- A. At times, a mile.
- Q. Did you see that vessel?
- A. No, we did not see that vessel. She was well off on our port beam.
- Q. What was the next vessel you heard the whistle of?

 A. The next was a steam-trawler.
 - Q. Where did you hear that whistle?
- A. That was forward of our starboard beam. [726—605]
 - Q. Forward of the starboard beam?
 - A. Yes, sir.
 - Q. How much forward?
- A. Oh, I could not say, probably a point or two forward, if I remember right.
 - Q. Did you hear more than one of her whistles?
- A. Yes, we heard several of her whistles, and we saw her also.
 - Q. She passed abeam? A. She passed abeam.
 - Q. When did you first see her?
 - A. Just forward of abeam.
 - Q. I say, when did you first see her?
 - A. You mean what time?
 - Q. Yes.
 - A. I don't know; I did not keep the time of that.
- Q. With reference to the whistles, when did you first see her? A. With reference to her whistles?
 - Q. Yes.
- A. Just about the time she blew her first whistle we saw her.
 - Q. You saw her just about the time she blew it?
 - A. Just after she blew her first whistle we saw her.

Q. And before she blew her second?

A. Well, I don't know how many she had blown, but it was her second that we heard

Q. How great was the interval between the first whistle you heard and the second?

A. I don't remember now how great an interval there was, maybe two minutes.

Q. They were fog-signals, were they?

A. They were regular fog-signals.

Q. You were blowing your whistle at the time?

A. We were blowing our whistle regularly every minute, an automatic whistle.

Q. And that second vessel, the trawler, was first heard a little forward of your starboard beam?

A. Of our starboard beam, yes, but a good distance from us. We could just see her, and we could see about a mile at that [727—606] time when she hove up.

Q. Was she about a mile from you when you first saw her? A. Yes, sir.

Q. And did not get any nearer?

A. No, I don't think she got any nearer. She was on a parallel course.

Q. Did you hear any other vessels?

A. Yes, we heard another, but it was a long way inside of us; it was about abeam we picked that up.

Q. And on which side?

A. On the starboard.

Q. You did not see that vessel?

A. The lookout man reported he had seen it.

Q. But you did not see it? A. No, I did not.

don't know that it shows, but it suggests that at 3 o'clock you wrote out a written order to the Chief Engineer with relation to the turns the engines were to make; do you remember that order?

A. Yes, sir,

- Q. Where were you when you wrote the order?
- A. In my room.
- Q. That was at 3 o'clock? A. At 3 o'clock.
- Q. What time was it when you were in your room and heard the Duxbury whistle? A. At 2:15.
- Q. So at 2:15 you were in your room and at 3 o'clock you were in your room?
 - A. Yes. I had been on the bridge in the meantime.
- Q. When you wrote this, did you note the time that you wrote it? A. I did.
 - Q. 3 o'clock, was it? A. 3 o'clock.
- Q. What did you do with the note when you had it finished?
- A. I was standing, as I tell you, about this windbreak, I was standing down there, and I called a Quartermaster. This was when the fog shut down. I called the Quartermaster from off the bridge and I stepped into my room and wrote the note on my desk and came out and handed it to him and told him to take it right to the Chief Engineer. Then I went on the bridge.
- Q. You know, as a matter of fact, don't you, that the Chief Engineer did not get that note until 5 minutes before the collision?
- A. That is what I know now; I did not know it then.
 - Q. Do you know why he did not?

A. I do not.

- Q. In answer to a question this morning as to your reason for changing the speed of the "Beaver" to 76 turns, I believe you [730—609] stated that you wanted to regulate the amount of turns the ship could make, so as to know what she would be doing; is that a correct statement of your reason for making the change?

 A. Yes, sir, that is about it.
- Q. Will you explain what you mean by that, I wanted to regulate the amount of turns the ship could make so as to know what she would be doing?
- A. Well, I did not want her to go above 76 and I wanted to know she would be turning that many turns. I did not want to leave it to the engineer's judgment whether he should make 78 or 76; I wanted 76 turns.
 - Q. Or 77? A. Or 77.
 - Q. You wanted 76 turns? A. I wanted 76 turns.
- Q. That was your reason stated to your counsel this morning in your answer to that question, for making the order, that you wanted 76 turns?
- A. To enable me to know what speed my ship was making and to know about what power we were using.
 - Q. What speed would she be making at 76 turns?
- A. At that time, under those conditions, or what speed can she make at 76—what do you mean?
- Q. What speed did you want her to make at 76 turns, when you wrote that note?
 - A. About 12 knots.
 - Q. You wanted her to make 12 knots?
 - A. About 12 knots; about that.

- Q. Why did you want her to make 12 knots?
- A. I considered that was the speed that I required to safely navigate that ship under the conditions.
- Q. Was that a reduction from the speed which you had been making through the channel? A. It was.
- Q. And from the speed which you were making up to Duxbury? A. It was. [731—610]
- Q. What speed were you making before you gave this order to make 76 turns? And I am going to ask you how you know it, after you have answered the question.
- A. I know now that at the time I only was calculating the speed.
- Q. So, at the time, you did not know what speed you were making?
- A. At the time I was calculating the speed. I know what speed we came out the North Channel at.
 - Q. Well, so do I.
- A. And I know what speed we went up to Duxbury Reef at.
- Q. So do I. But, at the time, you did not know what speed you were making, and you were calculating—
 - A. Up to Duxbury Reef I say, I did know.
 - Q. Oh, you did know. A. Yes, sir.
 - Q. How did you know that?
- A. Because we were just 30 minutes from No. 2 Buoy to Duxbury Reef Buoy abeam, which is a distance of 6½ miles; that is 13 miles an hour.
- Q. Did you make a calculation on the ship at the time which resulted in this conclusion of yours, that

you were making 13 knots? A. Why, certainly.

- Q. How did you know, Captain, that you were abeam of Duxbury? A. I heard the whistle.
- Q. So you knew from hearing a whistle in the fog that you could not see, that was half a mile off, that you were abeam of the whistle when you heard it? That is not anything remarkable, is it?
- A. Hold on a minute, now; the whistle of a buoy is entirely different from the whistle of a steamer, and I knew that there was no other buoy there with a buoy whistle but Duxbury Reef, and I knew very well when I was abaft that break-wind that it was abeam. [732—611]
- Q. You and I are getting very close together. You then did ascertain accurately that that whistle, when you heard it from the buoy, was abeam of your ship? A. Abeam of my ship.
- Q. How many whistles did you hear, one or more than one?
- A. I heard about two blasts of that whistle, and that is all I heard.
 - Q. And then it carried away?
- A. Yes. I could only hear it for the little while that we were abeam. Of course, I would have to wait for the next swell to come along and then by that time we were just beyond the reach of the sound.
- Q. Your steamer, I understand it, was a passenger boat? A. Yes.
- Q. And she had passengers on her on the 22d of November, on this occasion? A. Yes.

- Q. What do you consider, Captain, to be a compliance with the article with reference to the speed of a ship in foggy weather, with special reference to the "Beaver"? A. That article says that—
- Q. (Intg.) Excuse me, I am not asking you what the article says, I am asking you what you consider a compliance with the article with reference to speed.
- A. I was complying with them when I was making 12 knots, according to my estimation.
- Q. When you were making 12 knots, you complied with it? A. Yes, sir.
- Q. That is, you complied with it 5 minutes before the collision? A. Yes, and previous to that.
- Q. Previous to the collision you were making 13 knots?
- A. Up to the time I passed Duxbury Reef I said 13 knots. As I left Duxbury Reef the swell was getting stronger. [733—612]
- Q. I suppose you mean by that, that if you were to go far enough in a heavy swell you would have got your speed down to a few miles an hour.
- A. If it got a little heavier, yes. I have made as low as 5 knots with that same ship in a heavier swell.
- Q. When you were going through the channel you were making 15 knots?
 - A. Yes, that is what it figures.
- Q. And the 13-knot speed to Duxbury is dependent upon the accuracy of your judgment in hearing the Duxbury whistle abeam, is it not?
 - A. My ear, and the reading of the log, and the

time. I run as much on time as I do on anything else, when the ship is in certain conditions and turning so many revolutions.

- Q. But the time is dependent on the hearing of the sound abeam?
- A. They altogether make me sure of my accuracy in hearing that whistle.
- Q. That is, the time is fixed by the hearing of the sound?
- A. No, the time is not fixed by the hearing of the sound.
 - Q. One end of the time is? A. What end?
 - Q. The Duxbury end is?
- A. Mr. McClanahan, if you were walking from here to your office, and you have walked it once every two weeks for five years, you know pretty near how long it takes you to walk to the Merchants' Exchange Building. Now, I have gone that route by the Duxbury Reef every two weeks, with that same ship, and—
 - Q. (Intg.) For five years? A. No.
 - Q. For how many years?
- A. From the 1st of July until the 22d of November, with this ship, but I have gone with other ships; I have been on that route for 5 or 6 years.
- Q. Do all ships act alike on that route? [734—613] A. Mostly all ships act alike.
- Q. Each trip you made on the "Beaver," did you have the same kind of a swell?
 - A. Different swells under different conditions.
 - Q. Therefore the time would be different?

- A. Exactly, but under different conditions I know what our time would be.
- Q. Well, anyway, Captain, you did rely upon the accuracy of the Duxbury bearing?
 - A. I heard the whistle.
 - Q. And you relied upon the accuracy of it?
 - A. To a certain extent, ves. sir.
- Q. When you gave this order of reduction to 76 turns, you knew your ship was then making either 77 or 78 turns, did you not?
 - A. Yes. I felt sure that she was.
- Q. Did you think, when you gave the order to reduce perhaps one turn, that it was a practical order and could be accomplished?
- A. I knew that they might have to go below that before they got it but eventually they would get 76 turns within a few minutes.
- Q. By experimenting you thought they would get 76 turns?
 - A. They don't have to experiment; they all get it.
 - Q. But they get it by experimenting?
 - A. Yes, but it does not take long to get that.
 - Q. 3 or 4 minutes?
- A. Yes, or 5 or 6 minutes, but I wanted to know eventually what she would be turning.
- Q. So this 76 turn reduction order was not intended as a reduction order, it was not intended to reduce speed by that order, but simply to establish a fixed rate of speed?
- A. That is it exactly, to establish a fixed rate of speed. [735—614]

- Q. And when this order was sent by you at 3 o'clock your telegraph was set at full speed ahead?
 - A. Yes, sir.
 - Q. And had been since you left the port?
 - A. Yes.
- Q. And the telegraph was not changed until the time—
- A. (Intg.) I rang her to stop and full speed astern.
- Q. So then it was not the fog that induced you to send this order to reduce to 76 turns?
 - A. Yes, fog was what induced me to do so.
- Q. How much of a difference would that be, Captain, between 77 and 76 turns?
- A. If there had been no fog, and it was clear, I would not have sent any order at all; I would have let her gone along with the speed she came out of port with, which would have been 77 or 78, but on account of the fog I wanted it fixed at a certain rate. If there had been no fog, I would not have bothered.
- Q. You thought 77 turns were too much because of that fog?
- A. There is a general order from me to my Chief Engineer that when I hook her on full speed coming out of port, that he will make 78 or 77—in that neighborhood, not below; and particularly coming through North Channel I want and I require the full power on the ship.
- Q. And on this day the order was you supposed being carried out?
 - A. Yes, being carried out. Now, so he would not

get up to 78 or 79, because of the fog coming in thick, I wanted to be sure of a certain rate of speed and to know that she would not go above or below.

- Q. And you knew she was not making over 78 when you sent the order, if the order was being carried out? A. That is correct.
- Q. So it was not to reduce the speed of the ship but simply to satisfy your own mind and to know that she was going at a [736—615] certain fixed rate, that you sent the order?
 - A. That is the idea.
- Q. This order full speed by telegraph from the bridge might have been 76; that would have been full speed, would it not—it might have been?
 - A. It might have been.
- Q. And your order simply wanted to emphasize the fact that you did not want to go below or above that rate? A. Yes.
- Q. Now, Captain, I understand that after leaving Duxbury, this swell was dead ahead of you, that is, you were poking your nose right into it?
 - A. Practically, yes, sir.
- Q. It was one of those ordinary ground swells you meet on the coast, was it not?
 - A. No, it was an extraordinary swell.
 - Q. An extraodinary swell? A. Yes, sir.
- Q. An ordinary ground swell would not break over the Potato Patch, would it? A. No.
- Q. And this was breaking over the 4-Fathom Bank? A. Very heavy; 3 lines of breakers.
 - Q. And that was at what hour?

- A. 1:45 we went through the Channel.
- Q. What tide was that?
- A. It was the last of the flood.
- Q. Did that swell, as you came back from the point of collision, remain about the same, or was it increasing?
 - A. No, it remained a heavy swell coming back.
- Q. So that if it was breaking over the Potato Patch when you passed through the North Channel it must have been breaking over the Potato Patch at or about the time you returned to port?
 - A. Well, it was.
 - Q. It was? A. It was.
 - Q. You state that? A. Yes.
- Q. You have stated that this swell would affect the speed of [737—616] the "Beaver," retard the speed of the "Beaver"—is that correct?
 - A. After we got out clear of North Channel?
 - Q. Yes. A. Yes, I said that.
 - Q. It would retard the speed of the "Beaver"?
 - A. Yes, it would retard the speed of the "Beaver."
- Q. And I believe you said it would retard it about 3 knots per hour?
 - A. As it got heavier it would, yes, sir.
- Q. When did it get heavy enough to retard it 3 knots an hour? A. After we left Duxbury.
 - Q. There was no wind that day?
 - A. Very little.
 - Q. The swell was a long smooth swell, was it not?
 - A. It was a long swell.

United States Coast Pilot, for this coast, referring to page 74, where it says: "Immediately outside the bar there is a slight current to the northward and westward, known as the Coast Eddy Current." That refers to the approach to San Francisco harbor?

- A. Yes, I suppose that must be it, but this is the direction I have always found it to set, it curves with the bank and sets up into the bay about a little east of north.
- Q. And your understanding of the set of the current does not coincide with the statement found in the Coast Pilot Book?
- A. Oh, my opinion and the opinion of the Geodetic Survey differ on very many things.
 - Q. They do? A. Yes, sir.
- Q. This is issued by the Coast and Geodetic Survey of the United States Government, Department of Commerce and Labor? A. Yes.
- Q. Are you familiar with the statement that I have just read?
 - A. I think I have read it, yes.
- Q. And you differ with that statement as to the set of the current? A. At most times, yes.
- Q. So that we cannot get from you any help on this question of current, can we?
 - A. I think I have given a good deal of help.
- Q. Well, perhaps you have. Oftentimes these blessings come disguised. If the current was following you, or setting in your course, that would

San Francisco & Portland Steamship Co. 873
(Testimony of William Kidston.)

have some effect on the speed of the "Beaver," would it not?

- A. It certainly would. [740-619]
- Q. And that would have a tendency to overcome the effect of this swell you were bucking into?
 - A. It would, a little.
- Q. And it would also, Captain, affect the run of the ship as shown by the log in that it would show less than the run of the ship, would it not?
 - A. No, there would not be that much current.
- Q. We don't understand each other. What I am saying is, that whatever current there was would have a tendency to make the log show less than the run of the ship itself, if the current was following the ship?
- A. If the current was following the ship it would have a tendency to over-run less than it did.
- Q. Yes, now we understand each other. Now Captain, what is it that the log shows your run to have been from Red Buoy No. 2 to the point of collision—16.9, was it not?
 - A. No. 19.6.
- Q. Yes, 19.6. And that would be at what rate of speed? Have you figured it out? 12 knots, is it not? A. Yes, sir.
- Q. 12 knots without any deductions, or is it 12 knots with deductions? We are speaking now of the run of the log. It is 12 knots with the deductions, is it not, Captain? Just figure it out, Captain. What is it without any deductions at all—19.6 is the run shown.

Mr. DENMAN.—What is the time, an hour and a half?

Mr. McCLANAHAN.—An hour and a half.

- A. 12 knots and a quarter without the deductions.
- Q. We don't agree with you Captain, on that.
- A. The log showed 19.6 and we made $18\frac{1}{2}$ in an hour and a half. [741—620]
- Q. Let us keep away from the distance the ship has covered. I want to know the speed shown, as shown by the log. A. 13.06.
 - Q. 13.06 is the speed shown by the log?
 - A. Yes.
 - Q. Without any deductions?
 - A. That is just what the log shows.
 - Q. That is, the speed for one hour would be 13.06?
 - A. Yes, sir.
 - Q. As shown by the log, without any deductions?
 - A. Yes.

(Thereupon an adjournment was here taken until to-morrow Friday, July 21, 1911, at 10:30 A. M.)

JAS. P. BROWN.

[Endorsed]: Filed Dec. 11, 1913. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [742—621]

VOL. II.

FRIDAY,	JULY :	21st,	1911.
SATURDAY,	JULY 2	2nd,	1911.
MONDAY,	JULY 2	24th,	1911.
TUESDAY,	JULY 2	25th,	1911.
WEDNESDAY	, JULY	26th,	1911.
FRIDAY,	JULY	28th,	1911.
SATURDAY,	JULY 2	9th,	1911.
MONDAY,	JULY 3	31st,	1911.
TUESDAY, A	UGUST	1st,	1911.
THURSDAY, A	UGUST	3rd,	1911.
FRIDAY, A	UGUST	4th,	1911.
MONDAY, A	UGUST	7th,	1911.

INDEX.

	Direct.	Cross.	Re-D.	Re-X.
William Kidston (recalled)	622	622	674	
John K. Bulger	680	682	706	708
E. B. McClanahan	710			
Lionel Heynemann (recalled).		730		
James Dickie (Cross-X, re-				
sumed)		767	808	814
William W. Broaddus	818	820		
James Dickie (recalled)		824	825	827
· · ·			841	841
Olaf Lie (recalled)		846	849	
		895		
	942	959		
A. J. Johnson	919	926	930	
Johanne Lie	913	914		
Edward Johnson	930	938		
George Scott	965			

	Direct	. Cross.	Re-D.	Re-X.	
Alexander Swanson	969	973			
J. E. McCulloch	974	978	985	985	
A. G. McAdie	989				
F. Westdahl	994	1002	1010		
William Denman	1011	1022	[743	3]	
John Von Helms	1023	1026	1029		
Knowlson Townsend	1032	1033	1035		
David W. Dickie (recall)	1036	1042			
D. W. Dickie (recalled)	1045				
John Hyslop	1047	1049	1055	1056	
William Kidston (recalled).	1057				
TESTIMONY CLOSED	1060	[744	<u>[</u>]		
Friday, July 21st, 1911.					

[Testimony of William Kidston, for Claimant (Recalled).]

WILLIAM KIDSTON, cross-examination, resumed:

The WITNESS.—Now, Mr. McClanahan, I would like to correct the statement I made yesterday. You asked me, I cannot just recollect the nature of your question exactly, but something regarding when I had my consultations with Mr. Denman as regarding the matter of his answer to the complaint; I said that from the time on or about when the investigation took place with the inspectors I had not had any consultation with Mr. Denman until along about May; thinking it over afterwards I remembered that Mr. Denman had sent a telephone message to me to bring up witnesses from the "Beaver," and I did so. That

San Francisco & Portland Steamship Co. 877 (Testimony of William Kidston.)

was along about January, about the middle of January.

Mr. DENMAN.—Q. And then between January and May?

A. From then until about the 10th or 15th of May I had not seen Mr. Denman.

Q. Where were you, Captain?

A. Most of the time I was in bed. I was sick. I was laid up at home.

Mr. McCLANAHAN.—Q. Captain, your testimony before the inspectors was given on November 25th, was it not, three days after the collision?

A. Yes, I think it was.

Q. I want to read you a portion of your testimony and ask you if you recollect it. You were asked:

"Q. About what speed were you making through the water?

A. I ascertained after 11 knots, 76 turns.

Q. What was your speed under full headway?

A. 17 knots.

Q. What is your maximum revolutions when running full speed? A. From 83 to 85 turns. [745—622]

Q. From the time you went up the North Channel you were running full speed?

A. Yes, sir.

Q. When you left there you ran full speed?

A. 11 knots."

Then I asked you at that hearing the following question:

"Q. What was your speed just before you

gave your order to reverse your engines?

A. 11 knots."

Then one of the inspectors asked you:

- "Q. How fast do you think your steamer was going when the collision took place?
 - A. She was making 11 knots, or a trifle over.
 - Q. I asked you what was the speed of your ship when the collision occurred?
 - A. She was stopped when the collision occurred."

Do you remember that evidence, Captain?

- A. Yes, sir.
- Q. With reference to this 11-knot speed I would like to ask you when it was after the collision that you ascertained that the "Beaver" was making 11 knots.
- A. When I was making up my report for the Inspectors I measured the distance from Duxbury Reef Buoy that I had heard abeam to the point of collision that I had ascertained by cross-bearings, and I measured it as 11 knots. 11 miles from Duxbury Reef Buoy to there. And as we had passed Duxbury Reef Buoy at 2:15, and the collision occurred at 3:16, and that I had given the bell to stop and full speed astern at 3:15, which was one hour, that she had been making 11 knots in that hour. But I made a mistake. After a more careful investigation of the distance I found that it was 12 instead of 11. That is my reason for saying later that the ship was making 12 knots. That is what I base the speed of the ship on.

San Francisco & Portland Steamship Co. 879
(Testimony of William Kidston.)

Q. When did you discover this mistake? [746—623]

A. Oh, I could not tell you what time I discovered it, but I discovered it later on in going over the measurements again and going over the condition of things.

Q. You have in mind the time when you discovered

it. Was it before you were taken sick?

A. Yes, I think it was.

Q. Where did you discover it? Where were you when the discovery was made, or when you made the new calculation that a mistake had been made?

A. On the same chart, on board of the same vessel.

Q. You were aboard the vessel at the time?

A. I went aboard the vessel at the time, on one of her trips back from Portland, and I got my own chart and measured it by my own chart.

Q. And then you reported that to Mr. Denman, did you?

A. I think I spoke about it to Mr. Denman, yes, sir.

Q. Did you speak about it to Mr. Page?

A. No.

Q. You have had very little to do with Mr. Page in connection with the case, have you not?

A. Not a great deal with Mr. Page.

Q. More with Mr. Denman? A. Yes.

Q. You remember reading the respondent's answer yesterday in the freight suit?

A. I remember a little of it, not much.

Q. Did you read the answers to the interrogatories

(Testimony of William Kidston.) at the end of that?

- A. No; you remember I asked you if you expected me to read it all, that time you came and looked.
- Q. These interrogatories are sworn to by Mr. Frey on the 15th day of May, 1911, and in answer to one of our questions he says that the speed of the "Beaver" at 3 o'clock was 11 knots, with her engines making 77 revolutions per minute; do you know where he got that information? A. I do not. [747—624]
 - Q. That is not in accordance with the facts, is it?
 - A. I never gave it to him.
 - Q. Answer my question. A. No.
- Q. The statement is not in accordance with the facts? A. No.
- Q. She was going at a higher rate of speed than that at 3 o'clock?
 - A. It proved afterwards that she had been, yes.
- Q. Captain, will you please take a piece of paper and figure for me the slip of the "Beaver's" propeller when she makes 12 knots at 77 revolutions. Can you figure that, Captain?
- A. I believe I can. You want when she was making 12 knots at 77 revolutions?
- Q. Yes. That is in accordance with the fact, is it not? A. Yes, sir.
- Q. Now, I want you to figure out what her slip was.

 A. I figure that 29 per cent slip.
- Q. I think you are about right, Captain. In the answer which I have referred to of the respondent in the freight suit, Mr. Frey says that the slip of the "Beaver" at 3 o'clock on November 22, 1910, was 25

per cent. Do you know where he got that information? A. I do not, no, sir.

- Q. He did not get it from you? A. No, sir.
- Q. It is rather a large slip, is it not, Captain, 29 per cent? A. I have seen her 35 per cent.
 - Q. Well, answer my question.
- A. 29 per cent is a large slip, but not a large slip for that ship.
 - Q. What is that?
 - A. But not exceedingly large for that ship.
- Q. What is the matter with that ship, what is the peculiarity?
- A. Her nominal slip, her real slip that she always has got is 12 per cent, 11 to 12 per cent. [748—625]
 - Q. 11 to 12 per cent?
- A. Yes, no matter whether she is running in the bay, that is her real slip, which is nominal.
- Q. I believe you were on her on her trial trip, were you not? A. I was.
 - Q. Do you remember what her slip was then?
 - A. I do not.
- Q. Suppose you look at these blue-prints, which I hand you, furnished as I understand to the owners by the builders and see if you can refresh your memory as to what her slip was at that time.
- A. No, it would not refresh my memory Mr. Mc-Clanahan, because I had nothing to do with the taking of the slip, or anything of that kind.
- Q. How do you account for a 29 per cent slip on this particular day?
 - A. The trim of the ship, the lightness of her

draught; it takes 18 feet 2 inches of draught aft to cover the blades of the propeller, and we were only drawing 18 feet 6 inches that day lying alongside the wharf when we left port, consequently those blades were only covered 4 inches in still water, and going out against that heavy swell her wheel was exposed—the driving-power of it was exposed to such an extent that I consider that 29 per cent slip on that day, anywhere from 25 to 29 per cent was not an excessive slip.

- Q. You do not know that the wheel was exposed?
- A. I do know it.
- Q. How do you know it?
- A. I know it from the vibrations of the ship. I know that the wheel was exposed every time it went into the head swell.
 - Q. You know that from the vibration of the ship?
 - A. Yes, sir, from the vibration of the ship.
- Q. How does the vibration of the ship tell you that?
- A. The tremble. When the wheel is not turning in solid it [749—626] trembles and vibrates the ship. When it races you know there are times—
- Q. (Intg.) By the way, Captain, you did not set your log, did you, yourself—you did not stream it yourself? A. No, I never do.
 - Q. You simply give orders? A. Yes, sir.
 - Q. And they are executed? A. Yes, sir.
- Q. On this particular day you gave the order to stream the log, did you?
 - A. Yes, I would say I did.

- Q. Who did you give it to?
- A. To the second officer, and in this way: I would say, now see that your log is streamed. That is about the order I would give him.
- Q. And you assume that that order was carried out? A. Yes, sir.
 - Q. When was the order given?
- A. Oh, previous to getting up to No. 2 Buoy, coming through the Channel.
- Q. You do not know when the log, of your own knowledge, was streamed and set at zero?
- A. Yes, I can say I do because when the log is to be set would be at No. 2 Buoy.
 - Q. That is the rule, is it?
- A. That is the rule. The quartermaster has gone aft previous to this to stream the log, getting it ready for setting it at zero when No. 2 Buoy would be abeam. It is the same rule carried out, and no departure anywhere. When the object at which the log is to be set is abeam, the quartermaster does not look for that object abeam, it is the officer on the bridge, and when the object is abeam the officer on the bridge whistles to the quartermaster, which he did on this particular occasion, which I know because I was standing alongside of him, and then the quartermaster knows that it is time to set the log at zero. That was carried out on this [750—627] day as it always is.
- Q. You say you were on the bridge and heard the whistle? A. Yes, sir.
 - Q. And you assume that the quartermaster obeyed

the order? A. Yes, that he obeyed the order.

- Q. And that is all you know about it?
- A. Well, that is considerable.
- Q. Well, that is all you know about it, whether it is considerable or not?
- A. The order was given and I know it was carried out.
 - Q. You know it was carried out?
- A. So far as the whistle to tell him that it was abeam, and the quartermaster was aft, and I presume he carried out the order.
- Q. Yes, that is as far as you can go, Captain, is it not? You presume he carried out that order?
 - A. I presume he carried it out.
- Q. And you presume he carried it out at the time it was given? A. Yes, sir.
- Q. Speaking of being on the bridge, Captain, we have in the record three occasions when you were not on the bridge; were there any more occasions when you were not on the bridge, Captain?
 - A. At this particular time?
 - Q. After you left the North Channel?
- A. I don't recall any except the time I went down with Captain Lie to get him some dry clothes.
 - Q. I mean before the collision?
- A. Before the collision, no, I don't recall. I went down to my lunch and then I came up, and I went down again and stood under the bridge. I very often go off the bridge and stand underneath it in the shelter of this wind-break, where I can hear things better. The law does not [751—628] compel me

to stay on the bridge all the time and I take the most advantageous spot I can get at the time for listening for fog-whistles or anything of that kind; but I don't remember being off it more than those three occasions on that particular day.

Q. Were you on the bridge when you passed these whistles after you passed Duxbury?

A. No, I was under the bridge at this particular spot I am speaking about; I went on the bridge on one occasion that we picked up one of the whistles.

Q. That was on the starboard side of the ship?

A. I went up on the bridge on the occasion of picking up the whistle on the starboard side.

Q. Well, I am asking you where this sheltered place is?

A. Both wings of the bridge, both port and starboard.

Q. Where were you when you heard the first whistle of the first vessel—were you on the bridge or off the bridge?

A. I believe I was off the bridge at that time.

Q. And where were you?

A. I was under it, on the starboard side.

Q. On the starboard side you were?

A. Yes, sir.

Q. And you heard the whistle on the port side?

A. I heard the whistle on the port side.

Q. Where were you when you heard the whistle of the second boat—were you on the bridge or off the bridge?

A. Those were the fishing boats, I was on the

(Testimony of William Kidston.) bridge at that time.

- Q. When you heard the whistle of the second boat you were on the bridge, Captain?
 - A. I was on the bridge then.
- Q. During all the time that you were hearing the second boat's whistle? [752—629]
 - A. Yes, as far as I can remember.
 - Q. That was the boat you saw, was it?
 - A. That was the boat I saw.
- Q. Where were you when you heard the whistles of the third boat? A. I was still on the bridge.
 - Q. Still on the bridge, were you? A. Yes, sir.
- Q. And all of these whistles were heard after you had passed Duxbury?
- A. After we had passed Duxbury. This place that I refer to under the wing of the bridge is on a sheltered deck. On this particular ship it is as high as the ordinary coast ship's bridge. It is the same deck as the pilot-house. It is practically a lower bridge.
- Q. Why did you not stop your engines when you heard these whistles ahead forward of your beam? Was it because you ascertained the position from hearing the whistles?
- A. They were so far away, and the fog at the time was not dense, and I could see practically for pretty near a mile. There was no occasion for me to stop.
- Q. That is, you considered that you had ascertained within the rule the position of those vessels and therefore were relieved from stopping your engines?

A. I had ascertained that they were in safe positions so I could afford to go ahead and I was not breaking the rules of the road.

Q. Your understanding of the rule then is that if the whistle heard forward of the beam is ascertained clearly enough for you to know that there is no danger of collision, then you need not stop, and the rule does not apply?

Mr. DENMAN.—You mean in foggy weather or hazy weather?

Mr. McCLANAHAN.—Foggy weather. [753—630]

Mr. DENMAN.—Do you mean fog or haze?

Mr. McCLANAHAN.—Q. Captain, is that your understanding of the rule?

A. When I could see the distance I could that day at that time—

- Q. (Intg.) You are referring to what time?
- A. At the time I heard and saw those steamers.
- Q. Did you see them all at once? A. No.
- Q. Did you hear them all at once? A. No, sir.
- Q. How long an interval was it between hearing the whistles of the first steamer and hearing the whistles of the second steamer?

A. I would be afraid to venture and say how long it was because I did not take the time and the time was not taken between. I don't know how long it was.

Q. Did the condition of the fog remain the same?

A. I told you before, Mr. McClanahan, that the fog would shut down a little and then lift up and it had (Testimony of William Kidston.)
not got to be what we call thick fog at any of these
stages when I heard these whistles.

- Q. And you do not know the interval of time that elapsed between hearing the whistle of the second and hearing the whistle of the third boat?
 - A. No, sir, I do not.
- Q. What was the condition of the fog, with reference to the distance at which boats could be seen, when you heard the first whistle of the first boat? How far could you see?
 - A. I could see about a mile.
 - Q. You could see about a mile?
 - A. About a mile.
 - Q. And yet you did not see this boat?
 - A. I did not see the boat.
 - Q. So she must have been more than a mile away?
 - A. She must have been. [754—631]
- Q. Then you consider that hearing a whistle out of the fog, that was a mile away from you, was a situation that relieved you from the obligation of stopping your engines, under the rule?
- A. Particularly when you hear the whistle abeam, as I heard this whistle.
- Q. You said it was a little forward of abeam, did you not?
- A. It might have been a little but it was practically abeam so far as I was concerned in it. It was practically abeam, although it might have been a little forward of abeam.
- Q. And hearing the first whistle, you did not know the course of the vessel, did you? A. No.

Q. So under the circumstances of that situation, you considered that the rule was being followed?

A. Yes, sir.

Q. And that it was not obligatory upon you?

A. Exactly.

Q. What was the condition of the fog with reference to your ability to see when you heard the first whistle of the second vessel?

A. I could see pretty well. I could see practically a mile at that time.

Q. You could see practically a mile at that time when you heard the first whistle of the second vessel?

A. Yes, sir.

Q. And where was that whistle heard?

A. On the starboard beam, or probably a little forward of it.

Q. That is the vessel you saw, was it?

A. That is the one I saw.

Q. On the starboard beam, a little forward of the starboard beam?

A. A little forward of the starboard beam.

Q. You did not consider the rule obligatory upon you when you heard that first whistle for the same reason that you did not consider it obligatory upon you when you heard the first whistle of the first vessel; that is, her position was ascertained [755—632] to be one not involving danger of collision?

A. That is it, it was not involving danger of collision because I could see her also.

Q. Well, you saw her after you heard the first whistle?

- A. Practically at the same time; she whistled and she came out of the fog and I saw her loom up right at once, I thought I said that. When we heard her whistle we practically saw her, she came right out of the fog.
 - Q. And she was about a mile from you?
- A. She was I should say about a mile inshore from us.
 - Q. Which way was she travelling?
- A. She was travelling to the southward. She was going to the North Channel.
 - Q. How long did you see her?
- A. For a very little while, I could not say how long. After she got abaft of the beam she soon vanished from sight. I could not say just how long it was.
- Q. You saw her just a point or two forward of the beam? A. No, not as much as that.
 - Q. Not as much as a point?
 - A. Probably a point.
 - Q. Probably a point?
 - A. Yes, probably a point.
- Q. And when she got how far abaft of the beam did you lose sight of her?
 - A. Oh, maybe two points abaft of the beam.
- Q. What was the fog condition when you heard the first whistle of the third vessel?
- A. Practically the same, practically the same condition.
 - Q. You could see then a mile?
 - A. Yes, I judged I could see a mile at that time.

- Q. And you did not stop for the same reason that you did not stop for the other two vessels?
- A. Yes, sir, it was further away from us. It was further in shore.
- Q. You did not consider there was danger of collision? [756—633]
 - A. I did not consider there was danger of collision.
- Q. And that is your interpretation of the rule, is it, that where the first whistle does not show danger of collision, that then the rule is not binding upon you?
- A. Oh, now, you are leading me to something that is not a fact, and not what I think at all.
- Q. Well, I will cut you loose and let you go it yourself. What is your interpretation of the rule?
- A. I consider that I was carrying out the rule. The rule is that under circumstances and conditions you shall do so and so. The circumstances and conditions were sufficient to me to prove that I could go ahead on my course, that I was not running into any danger of collision.
- Q. I am asking, Captain, for your understanding of the rule as a seafaring man. Does the rule requiring the engines of a steamer to be stopped on hearing in a fog the fog-signal of another vessel forward of the beam, does that rule apply, in your judgment, when the sound heard does not involve danger of collision?
- A. And until you have ascertained the position, and then navigate with caution. Yes, that is the rule.

Q. Now, answer my question, Captain.

A. Under the conditions on this day, and the conditions of fog, and the distance I could see in it, I consider that I was complying with the rules.

Q. That does not answer my question.

A. Well, you make it a little clearer to me and I will be pleased to answer it.

Mr. McCLANAHAN.—Read the question, Mr. Reporter.

Mr. DENMAN.—Of course all this examination is open to the objection [757—634] that the rule speaks for itself?

(Question read by the Reporter.)

Mr. McCLANAHAN.—Now, Captain, answer that question.

Mr. DENMAN.—What rule do you refer to, Mr. McClanahan?

Mr. McCLANAHAN.—Don't you know?

Mr. DENMAN.—I would like to have it before us so the exact words of it can be gotten.

Q. Can you state the rule, Captain, the exact words of it?

A. Probably not the exact words, no.

Mr. McCLANAHAN.—Q. You know the rule I refer to, do you not, Captain?

A. Yes. I think I practically repeated it here a little while ago.

Q. What is that?

A. I say I think I practically repeated it here a little while ago.

Q. Now, answer the question, please.

- A. I don't believe I can make any different answer to that question than I have already made.
- Q. I am not applying the question to the "Beaver" on the 22d of November, 1910. I want your understanding of the rule, that is all.
 - A. Oh, my understanding of the rule.
 - Q. Yes, and that is all.
- A. Well, that amounts to the same thing, doesn't it?
- Q. Well, you can answer my question yes or no, does it apply when, in your judgment, there is no danger of collision?
- A. The rule distinctly says that on the hearing of a fog signal—in the first place, the fog is supposed to be fog and you are blowing your whistle, when you cannot see a mile or two, if the fog comes down. That is my definition of the fog.
 - Q. This rule applies only to fog? [758—635]
 - A. And to falling snow or rain.
 - Q. And to mist?
- A. And mist. The rule goes on to say that if a steamer's fog-signal is heard forward of the beam you shall stop and navigate with caution until you ascertain the direction and all danger of collision is avoided.
- Q. Have you attempted now to give me the words of the rule?
- A. Not verbatim, no; but that is practically the understanding of that rule.
- Q. Captain Kidston, I must insist upon an answer to my question. You know what it is. I will say,

generally, that I want to know whether your interpretation of that rule is that if the first whistle heard does not involve danger of collision, is the rule obligatory, do you have to stop your engines, if the whistle heard does not involve danger of collision?

Mr. DENMAN.—You want the Captain's opinion on that, not the decisions of the Courts?

Mr. McCLANAHAN.—Simply his opinion.

- A. No, sir, in my opinion when the signal heard does not involve danger of collision, at the distance that I heard these whistles, and could see—
- Q. (Intg.) Please leave out November 22d, Captain; I am asking you now for your interpretation of the general rule and without any reference to any particular ship or to any particular day. When the whistle heard does not involve danger of collision, in your judgment does the rule apply?
- A. When it does not involve danger of collision the rule does not apply.
- Q. Suppose the whistle heard is 4 or 5 miles away, does your judgment of that involve danger of collision?

 A. No.
- Q. And therefore the rule would not apply in your judgment [759—636] under those circumstances?
- A. According to what bearing the whistle was when you heard it.
- Q. What bearing would involve danger of collision?
- A. If you heard the whistle four or five miles away and it was dead ahead, if you kept on, yes, there is danger of collision.

- Q. Would that involve danger of collision, if when you heard the whistle it was 4 or 5 miles away?
 - A. Yes, it does involve danger of collision.
- Q. Captain, why didn't you stop your engines when you heard the first whistle of the "Selja"?
 - A. I stopped them when I heard her first whistle.
- Q. Do you want to shift the responsibility for not speaking to the officer on the bridge?
 - A. No, I do not.
- Q. Then I will ask you the question again, why were the engines of the "Beaver" not stopped when the first whistle of the "Selja" was heard?
 - A. Now I can answer you.
 - Q. Well, answer it.
- A. When the whistle of the "Selja" was first heard it was reported to me almost as soon as it could be reported and I acted almost as soon as it was possible to act. Our own whistle blowing just at that moment, I remember distinctly saying to the second officer, "Is the whistle close aboard?" It was indistinct, I did not hear it very loud. I said, "We will hear it again, I will get it myself." That is the reason we did not stop.
 - Q. That is, you heard a whistle and—
 - A. (Intg.) I did not hear it.
 - Q. Well, a whistle was heard by the "Beaver"?
 - A. Yes, sir. [760-637]
- Q. That was so indistinct that you could not tell whether it was far or near, and that was the report that was sent to you, and you said—

- A. (Intg.) That was the report that was told me on the bridge.
- Q. And you said, "I will wait until I hear another"?
 - A. No, I did not wait. I starboarded my helm.
 - Q. That is not stopping your engines, is it?
- A. No, it is not, but I was acting, I was starboarding my helm.
- Q. Let us confine ourselves, Captain, to Article 16. I asked you why you did not stop your engines when the whistle of the "Selja" was heard and you answered me, as I make it out now, that the whistle heard was indistinct?
 - A. It was a very indistinct whistle.
 - Q. And it was indefinite as to being far or near?
 - A. If it was near we could hear it better.
 - Q. And that is your reason for not stopping, is it?
- A. But it being indistinct, it must be some distance away.
- Q. I say that is your reason for not stopping the engines?
- A. That is my reason for putting my helm a-starboard and not stopping; I wanted to hear it again.
 - Q. Why did you put your helm a-starboard?
- A. Well, I will tell you why I did, I thought it was a steamer coming down on the parallel course with my own ship and—
- Q. (Intg.) Let me ask you right there, Captain, why did you think that? You heard but one whistle—or you didn't hear any whistle?
 - A. I didn't hear any whistle.

Q. It was simply reported to you?

A. It was reported to me that they heard a very indistinct whistle. [761—638]

Q. Now, why did you think the ship was coming down the coast?

A. Because we had been meeting steamers coming down. I knew that we were coming out of a bight. I knew we passed two of the trawlers, and I know they always travelled in twos and threes and fours, and the officer reported that he heard this very indistinct whistle, I thought it was another one of these trawlers, or a steam-schooner.

Q. Well, don't you stop for trawlers as well as for anything else?

A. Yes, but if I thought it was a trawler coming down on a parallel course—you asked me if I thought it was on a parallel course and I said I thought it was one of them, on account of the smallness of the whistle I heard.

Q. What were you starboarding for, to get out of the way? A. To give more room.

Q. You didn't know what course this whistle indicated?

A. My God, I never dreamed it was anybody coming out from the beach, going off shore; I never thought that until I got the second whistle. I never thought it was anybody inside of me and heading off shore.

Q. You never dreamed that? A. No.

Q. Captain, do you change your course as a rule on hearing a fog-whistle?

- A. Not as a rule, not as a rule.
- Q. It is rather a risky thing to do, is it not, on hearing one whistle to change your course?
 - A. On hearing one whistle, I think it is.
 - Q. Didn't you want to take a chance that day?
- A. Well, I changed my course to starboard that day, to give him more room, considering it was a ship—I thought it was a ship coming down on a parallel course.
- Q. Why did you stop to reverse your engines when you heard the second whistle? [762—639]
- A. Well, then I made up my mind that I might have been wrong; and when I heard the second whistle it sounded to me very close aboard. The officer who said he heard the first whistle said it was about a point on the starboard bow and I had swung about a half point, and that whistle seemed to me—I did not go to the compass—but it seemed to me to be still about a point on the bow, that she might be crossing our bow and there was only one thing for me to do, to stop and go astern and put my helm a-starboard and try to swing under her stern.
- Q. When you heard the second whistle, you ascertained the position of the "Selja"?
- A. I ascertained it nearly, I ascertained it as nearly as I could.
- Q. And that was a case where you obeyed the rule even though you had ascertained the position of the vessel? You know the rule, as I remember it, say—inferentially—that you don't have to stop if the position of the vessel has been ascertained. Now, here

is a case where you ascertained the position and therefore you stopped.

Mr. DENMAN.—Your inference then is that he can ram a vessel if he ascertains where she is?

A. He was blowing one whistle and I knew he was under way and I said at that time he must be crossing our bow; my whole object was to get under his stern, and by putting the helm a-starboard I thought I could get under the stern.

Mr. McCLANAHAN.—Q. You stopped and reversed because the whistle told you there was danger of collision?

A. Yes, sir; Mr. McClanahan, wise men will sit on these cases, and there have been a lot of you wise men sitting on these cases for weeks, and it will go up to wiser men bye and bye to judge; wise inspectors sat on my case for several days and it [763—640] took two weeks for them to decide whether I was right or wrong. Now, in my position at that time as the captain of the ship I had one second to make up my mind whether I was right or wrong.

Q. In other words, it was in extremis that you acted?

A. I acted according to the best of my judgment, complying with the laws for navigating ships, to the best of my judgment and in the belief that I was right.

Q. The answer in the case brought by Olaf Lie vs. The "Beaver" says that this first whistle of the "Selja" was heard at 3:13½ do you know where that information came from?

- A. I am blessed if I know; I don't know.
- Q. Did you hear it at 3:131/2?
- A. I did not take the time when I heard that first whistle.
- Q. If you in your direct examination here have stated that you heard the whistle at 3:13, was that an inadvertence on your part?
- A. If I said anything in the direct examination, the only way I could say that was we saw her and went astern; we went astern at 3:15, we stopped and went astern at 3:15. Now, the whistle I heard from that ship, the one I heard from that ship was just a second or an instant before I went astern. Now, that is the only way I can place that time.
- Q. What will you say to your evidence in this case, that you heard a whistle at 3:15?
 - A. I never said that.
- Q. And if you did say it, it is a mistake? As a matter of fact, Captain, the record shows that you did say it? A. That I heard a whistle at 3:13?
 - Q. Yes; is that an incorrect statement?
- A. Well, the rest of the statement must contradict that because my statement says that after the first whistle was heard by the officer and reported to me, that I went across the bridge [764—641] and ordered the helm a-starboard, and our own whistle blew and after it finished blowing I immediately got a whistle from the "Selja" and immediately upon hearing the whistle from the "Selja" I stopped and went full speed astern, which was at 3:15.
 - Q. Well, at any rate, you did not hear any whistle

at 3:13? A. I don't remember any 3:13 about it.

Q. I want to know, Captain, something about the situation when you first saw the "Selja"; you remember seeing her?

A. Yes, very distinctly. She was of a great deal of interest to me when I saw her.

- Q. Did you see the whole ship at once? A. No.
- Q. She loomed up, did she, gradually?
- A. Not very gradually, very quickly.
- Q. Very quickly? A. Yes, very quickly.
- Q. Was that because of the speed of the "Beaver"? How do you account for that?
 - A. She came into view very quickly.
- Q. But at first there was an indistinct outline? That was the first sight you got?
 - A. That was the first sight.
- Q. Had you or had you not blown three whistles at that time? A. I had blown them.
 - Q. You had blown them? A. Yes, sir.
- Q. So that you had blown the whistles before you saw the "Selja"?
 - A. Before I saw the "Selja."
- Q. Do you know the three whistle rule so called? Do you know what it is?
 - A. To be applied when you are backing.
 - Q. On all occasions?
- A. No. on this particular occasion. It is for this particular case.
- Q. Does it apply when you are backing, when you are not within sight of a vessel?
 - A. Yes, sir, it does.

- Q. That is your understanding of it, is it?
- A. Yes, sir. [765—642]
- Q. How soon after seeing the "Selja" did she whistle three times?
- A. Oh, I cannot say how many seconds, but just after I had seen her; after she had come fully in view she blew her three whistles.
- Q. So that she was in view sometime before she did blow three whistles?
- A. I said just after she had come fully into view she blew her three whistles.
- Q. As I understand you, you at that time starboarded your helm, put it hard over?
 - A. At which time?
 - Q. Just before the collision.
- A. No, just before the collision I had it hard-aport.
 - Q. Oh, you had it hard-a-port? A. Yes.
- Q. The first order was a-starboard and the second was hard-a-port? A. Yes, sir.
- Q. That was before you saw the "Selja" was it not?

 A. That was before I saw the "Selja."
 - Q. What did you do that for?
- A. To go under her stern if she was crossing my bow.
 - Q. Yet you had not seen the boat?
 - A. I had not seen the boat.
 - Q. That was good judgment, was it, Captain?
 - A. I consider it was very good judgment.
- Q. And yet if you had not done it there would have been no collision?

A. If I had kept my helm to starboard I don't believe there would have been any collision.

- Q. If you had not put it to port there would not have been any collision? That illustrates, does it not, Captain, the danger of changing your helm when you have not seen a vessel?

 A. No, it does not.
 - Q. It does not? A. No, sir,—
 - Q. Well-
- A. (Continuing.) Will you let me finish my answer? [766—643]
- Q. Yes, surely; don't think I am trying to stop you from saying anything, Captain?
- A. The reason why I say if I had kept my helm to starboard there would have been no collision is from the proofs in my mind since, from my own personal observation at the time, that if I had known that ship was lying still in the water, and she had been blowing two whistles instead of one, which indicated she was under way, and I kept my helm to starboard there would have been no collision.
- Q. Now, Captain, what time elapsed from the starboarding to porting your helm?
- A. Oh, it was a very short time, very little; I don't know in seconds how much it was, but it was not more than—say our whistle blew, that is 5 seconds, and his whistle blew—probably 10 or 15 seconds, or something of that kind elapsed from the time the order was given to starboard until the order was given to hard-a-port.
- Q. After the order "hard-a-port" how long was it before you struck the "Selja"?

- A. I would say about a minute and a half; about a minute and a half, I think.
 - Q. Did not this collision take place at 3:16?
 - A. 3:16, yes.
 - Q. You reversed your engines at 3:15?
- A. Yes, that is what the log shows; that is what the log shows.
 - Q. I am asking you for your judgment.
- A. I have told you my judgment. I said about a minute and a half.
- Q. In your judgment, then, the collision took place shortly after 3:16?
- A. Or I may have gone full speed astern 20 seconds before 3:15. I want to tell you, Mr. McClanahan, there are no bridge officers and there are no engineers in [767—644] taking time by telegraph, and such like, that take the seconds; they generally take the nearest to the minute. It may have been 3:14-40, and they may have called it 3:15. The same in the engine-room. Or it may have been beyond that.
- Q. Don't you know that that statement does not hold true of the "Beaver," that the engine-room bell-book does show seconds?
- A. It shows the half minute only. He does not put it down in seconds, he will take the half minute, maybe.
 - Q. But that is 30 seconds?
- A. Yes, but if it should want 15 seconds of being the full minute he will not take that, he will take the minute. Now, 15 seconds is a long time backing

(Testimony of William Kidston.) full speed astern.

- Q. You were on your course practically when you reversed, were you not?
- A. No, I was not on my course practically when I reversed. I had starboarded half a point.
 - Q. Well, is not that practically on your course?
- A. Well, you can call it so if you want to, but I would not say it; I would say I was not on my course, I starboarded half a point.
- Q. So you were half a point off your course of North 86 West when you reversed?
- A. When I reversed—no, when I ordered hard-a-port.
- Q. I am not talking about hard-a-port, I am talking about your reversing your engines; I say you were half a point off your North 86 west course when your reversed your engines:
- A. Yes, because I reversed immediately; yes, I guess about that.
- Q. How much had you swung under the hard-aport helm at the moment of impact, according to your judgment?
 - A. 5 points, or 6 points, maybe. [768-645]
 - Q. 6 points in a minute and a half?
 - A. I said 5 points, or 6 points maybe.
- Q. You were on your north 86 west course headed into the swell, were you?
 - A. Headed into the swell.
- Q. And when you swung under the port helm you had the swell on your port quarter?
 - A. No, sir, I did not.

- Q. Where did you have the swell?
- A. Forward of the a-port beam.
- Q. And you had swung 5 or 6 points at the time of the collision? A. About that.
 - Q. And you struck the vessel at right angles?
 - A. Struck her at right angles.
- Q. And she at the time you struck her was pointed in what direction?
- A. Well, she was pointed up into the swell but was not into it.
 - Q. Just a little west of it?
- A. She was pointing up angling to the swell. She was not into the swell when we struck her.
- Q. She was getting into the swell; that is, she was heading into the swell, working that way?
 - A. Yes, sir, she was working that way.
- Q. How much did she lack of being head-on into the swell?
- A. Oh, probably two points maybe, or a point, a point or two; I don't remember; I could not tell just exactly.
- Q. So, then, we have a pretty clear understanding from your testimony of how the boats were headed at the time of the impact, have we not?
 - A. I have, I don't know whether you have.
- Q. Well, from your testimony; you have told me all about it, have you not?
- A. Oh, I don't think you have got it all out of me yet. [769—646]
- Q. Well, we will get it all if it takes all winter. What else is there that you have not told me, Cap-

tain, about the way the boats were headed at the time of the impact? Tell it all.

- A. We had the swell forward of our port beam.
- Q. You have told us that.
- A. The "Selja" was heading up into the swell, but not into it, she was set up for it, angling on the swell.
- Q. You have told us all that. Tell us something that you have not told us about how they were heading, so that we may have it all.
- A. You ask me the questions and I will answer them.
- Q. Well, I think you have told us all, have you not, about what you know of the heading of the two ships at the time of the impact?
 - A. You said you knew it all.
- Q. I said "we"; I mean that the record shows it all. A. Maybe it does, I don't know.
- Q. Now, I understand that after the impact the "Beaver" backed straight out?
 - A. No, I don't say that she backed straight out.
- Q. What is your understanding of how she backed?
- A. After we hit that ship we remained in that hole I suppose for maybe 5 or 6 seconds, maybe a little longer; it seemed longer to me but it might not have been any longer. The "Selja" was backing at the time—
 - Q. (Intg.) At the time you hit her?
- A. At the time we hit her she was backing. It seemed to me that for the time we remained in that hole that we penetrated in her side, that the "Selja"

in backing had pulled us around a bit with her, had pulled our bow around with her as she was backing, so that when we came out of the hole we came out at [770—647] a little bit more of an angle than we went in.

- Q. That is, she pulled your bow a little more to starboard? A. Yes, sir.
- Q. So that when you came out you backed straight out from that angle that she pulled you around to?
- A. Yes, straight out from that angle, but not straight from the angle at which we went in.
- Q. How far did you back your vessel from the "Selja" before you stopped?
- A. When we came out of the "Selja" I was not backing at all. After I got out clear of the "Selja" I backed a little way, maybe half a ship's length.
 - Q. And then you stopped? A. Then I stopped.
- Q. Then what did you do next, what was the next maneuver you made?
 - A. I cleared away the boats and lowered two.
 - Q. I am talking about the maneuvers of your ship .
- A. Oh, I stopped there and occasionally would give what we call a kick-back; she had no stern-board on her and a kick once in a while with the right-hand propeller will serve to slew the ship a little, to keep her bow still a-starboard. For some reason our bow kept canting over to port. My object was to keep the swell on the port bow, so as to make a lee for the boats that were coming with these wrecked people.
 - Q. You don't know why your boat kept canting

to port, do you?

A. No, I could not say that I do. It may have been that there was some eddy deflecting from the stern of the "Selja" as she went down, that might have been sweeping against our starboard bow. I don't know what it was.

Q. But a current would account for it?

A. If there was a current hitting me on the quarter that would account for it, or if it was hitting me on the starboard bow [771—648] it would account for it the other way.

Q. Throwing it to starboard?

A. If it was hitting me on the starboard bow it would throw me to port; if it was hitting me on the port quarter it would throw me to port also.

Q. Your vessel had the tendency though to cant to port? A. Yes, sir.

Q. And you didn't know the real reason for it?

A. I didn't know the real reason for it.

Q. Was she lying as we have got her now when you took the bearings?

A. No, her bow had swung a little to port at the time I got the bearings.

Q. Swung up against the swell?

A. Yes, sir, as I tell you, she had a tendency to swing to port. We swung a little more into the swell. We gradually got away into the swell as the last boats came down.

Q. This unknown force gradually swung your bow to port so you were into the swell finally?

A. Yes. I don't know what it was, but that is

(Testimony of William Kidston.) the way it swung.

- Q. The inclination would be to throw the ship the other way, to starboard, would it not?
 - A. Yes, sir.
- Q. But for some reason that you don't know of, the ship was swung to port?
 - A. She was swung to port.
- Q. It was before she got fully into the swell that you took the bearings?
- A. I cannot recollect that. Her head was pretty near into the swell, maybe a little on the port bow, at the time I took the bearings.
- Q. You have given us, have you, Captain, your best judgment and recollection of the position of those boats at the time of the impact, just before the impact and after the impact? A. Yes, sir.

[772-649]

- Q. The "Beaver" at no time was anchored, was she?

 A. No, sir.
- Q. How long did she remain in the locality of the point of the collision before you took any affirmative action to get away from it?
 - A. From 3:16 until 3:57.
- Q. Do you think you stayed in the place of collision all that time?
 - A. No, but we were not very far from it.
- Q. You did not stay in the place of collision all that time though?
- A. No. We separated quite a little bit but not very far.
 - Q. Would the swell of that day have any tendency

to take you away from the point of the collision?

- A. It did. It set us away a little all the time.
- Q. And there was this other unknown force that was moving the "Beaver"?
- A. Something was swinging her to port, I don't know what it was.
- Q. There were two forces there that might have moved the "Beaver" from the point of collision?
 - A. There were.
- Q. And you don't know how much she was moved, if she was moved at all?
 - A. Oh, I know she was moved.
- Q. I say, if she was moved at all, you don't know how much she was moved.
 - A. I would not say how much, no.
- Q. Do you know, Captain, how long it was before Captain Lie came on to the "Beaver"?
 - A. No, I would not say how long.
 - Q. Do you remember when he came on?
- A. Very well. He came in one of the last boats. He came, I think, in the last boat—no, he did not come in the last boat. I think the last boat went out to get the men who were swimming. He was in the other boat. His crew was practically all aboard before he came. His wife and his children came in his own little boat. His Chinaman [773—650] came in another boat. He came in the third boat, I think, if I can remember right, but he was one of the last ones to come aboard anyway.
- Q. It was a good three-quarters of an hour after the collision, was it not?

- A. Oh, no, not so much as that.
- Q. He did not come right from the "Selja" to the "Beaver," did he?
- A. If I can recollect it, from the time he was picked up in the water, he came right direct to the "Beaver."
 - Q. From the time he was picked up?
 - A. Yes, sir.
 - Q. He was in the water, was he?
- A. He jumped into the water and they picked him right up.
- Q. He did not reach the "Beaver" before the "Selja" sank, did he?
- A. No, I don't think he did. I would not be sure about that, but I don't think he did.
- Q. So it was sometime after the collision that Captain Lie came aboard?
 - A. It was sometime before he came on board, yes.
- Q. Do you remember that Captain Lie was in the boat that went around to pick up the other men who were in the water?
- A. He might have been; I don't recollect whether he was, or not.
 - Q. At any rate, that was the last boat that came?
- A. I think that was the last boat that came, the one that picked the men up in the water.
- (A recess was here taken until 2 P. M.) [774—651]

AFTERNOON SESSION

WILLIAM KIDSTON, cross-examination, resumed:

Mr. McCLANAHAN.—Q. Captain Kidston, what would you have done had you heard two whistles from the "Selja" instead of the one whistle which you heard?

- A. I probably would have slowed and stopped until I located what position she was in.
- Q. Do you remember answering that question before the inspectors? Let me refresh your memory.
- A. I think I do. I think I said that I would retain my course.
 - Q. Let me read this to you:

"Inspector BOLGER.—Q. Suppose you had two signals from the 'Selja' what would you have done? A. I would have kept my course. I would probably slow down and proceed cautiously but would not have stopped and backed."

- A. Yes, I remember that.
- Q. That was your judgment of what you would have done when asked the question three days after the collision? A. Yes.
- Q. What is your opinion as to the cause of this collision?
 - A. You want me to tell you what I think?
 - Q. Yes, Captain.
- A. Primarily the cause was fog; secondarily, because the "Selja" was lying still in the water and not blowing two whistles, whereas it was blowing one, giving me the impression that he was under way.

- Q. That is your belief as to the cause?
- A. That is my candid belief as to the cause.
- Q. I believe it is your theory or belief, that at the time [775—652] of the impact the "Beaver" had stopped her way through the water; am I correct?
- A. I did say so; I am still practically of the opinion that her way was stopped in the water. She might have had a little headway but I did not think so, but she might have.
- Q. In your opinion she did not have enough headway to have punched that hole in the side of the "Selja" 10 or 12 feet?
- A. I think that that hole in the "Selja" was caused more by a chop along with what little headway she might have had than it was by a direct ram.
- Q. Do you not think the speed of the "Beaver" would have caused that hole through a direct ram, as you call it?
 - A. It might. I might be mistaken. It might.
- Q. What do you mean by your use of the word "chop"?
- A. To me, looking right over the bow at the time of the collision—practically my whole attention was right on that at the time—we seem to have raised on the swell and as we came down on the swell again that was the time of the collision, and in coming down she chopped right into the side of the ship.
 - Q. Do you think the "Selja" was anchored?
 - A. Not at all I don't think so.
- Q. Do you think the "Selja" was being affected by the swell also? A. I think so.

Q. Is it your theory that the swell brought the ships together?

A. I am not theorizing at all. I am just telling you what it looked to me at the time.

Q. Well, it is your belief?

A. No, I did not say it is my belief that the swell brought the ships together.

Q. I am asking you if that is what you meant by the use of [776—653] the word "chop," that it was the action of the swell on the two vessels that brought the "Beaver" down on the "Selja"?

A. I think the "Selja" had just about rolled in the swell as we had been up on it and coming down.

Q. Then it was the reverse action of the swell on the two boats that brought them together?

A. It may have had some bearing on it; I don't know.

Q. Well, that was your theory, was it not, before the inspectors?

A. I don't just recollect whether I said said that was my theory before the inspectors, or not. I don't recollect that. Maybe I did.

Q. Well, don't you recollect that that was the theory of your report?

A. I remember—now, let me see—yes, in my report, yes, that is right, I did say something about that in my report.

Q. Do you know that that is the theory of some of your officers who have testified at this hearing?

A. Yes, I think I did hear some of them say that.

Q. You are still of the opinion that that might

have been the cause of bringing the boats together?

- A. I am still of the opinion that the swell might have been some cause—might have been.
- Q. Can you reconcile that opinion with the statement that you have made that the "Selja" at the time of the impact was nearly headed into the swell?
 - A. I certainly could.
 - Q. You do reconcile them? A. Yes, sir.
- Q. Referring now to your ship's log, this over-run of the log in this amount depends upon the condition of the weather, does it not?

 A. And the currents.
- Q. So that you cannot do more than estimate or judge or pass [777—654] judgment on the amount of it over-runs—you cannot be exact?
- A. Not excepting where we have good departure from one point to another. For instance, if we had taken a departure in clear weather from Pt. Reyes, and the distance is 67 miles, and we had run until we had Pt. Arena abeam, and the log had over-run half a knot an hour in that time, I would readily be able to calculate what she was over-running; and under conditions of the weather at that time, that and the current, I would judge them from past experience if I met it again what my log should do.
 - Q. But where you don't have the two points?
- A. If I am running a log for a year and I have kept correct tab of that log when I have had these departures, it is the only way in which we can navigate on the coast in foggy weather, to begin with, knowing your ship's compass, knowing your ship, knowing your log, having a record of the errors of your log

under certain conditions, and having a good local knowledge of the conditions of the weather and the currents on the coast. It is the only way in which a man can navigate on the coast in foggy weather—that and the help of his sounding-lead which on this coast is not a very good one.

Q. It still remains, however, an uncertain *quantum*, the log over-running or under-running depending on the condition of the sea.

A. It is not such a great uncertainty, no, sir. Figuring it down to a percentage, I allow on certain kinds of sea and weather 4 per cent on our log. I may either increase or diminish that according to the state of the weather. But I must be pretty accurate, and every other man that navigates ships on this coast must be pretty accurate in knowing what his log does or he would not be able to navigate safely.

Q. Do you make any entry in your log-book of the run as shown by the log? [778—655]

A. Oh, yes; that is, I don't make it, my officers make it. They take a reading every two hours.

Q. What was the run as shown by the log on the way back to San Francisco on the day of the collision?

A. We did not make any entry of that.

Q. Why not?

A. Well, I will explain to you why that was not done. It could have been done later on, only I did not permit it to be put in. After we started from the wreck back the log was streamed and left set on exactly the amount that was on it when it was taken

in, at 19.6. At 5:03—yes, at 5:03 we heard the United States Revenue Cutter "McCullough's" whistle. had been in communication with her by wireless and she came laying around the light-ship and had started north, in case I needed assistance. At 5:03 we heard her whistle. I did not know it was her whistle until later on: she came in sight a minute or so afterwards, and I slowed and then stopped and when I stopped I told the officer to send a man and haul the log in, not knowing how long I was going to be stopped and I did not want the log to be fouled, which is a customary thing to do when you stop in case you have to back. After I had spoken to the "McCullough" and we got under way again the officer asked me if he would stream the log and I said "no, never mind streaming the log, we only have a mile and a half or two miles to the light-ship, we will hear the whistle in a minute." That is the reason why the log was not streamed again, and that is the reason why we omitted putting down what the log showed when we got to the light-sbip.

- Q. Then you don't know what the log showed?
- A. At that time I don't know what the log showed.
- Q. Was the weather foggy at the time you heard the "McCullough's" first whistle? [779—656]
- A. Yes, but not very foggy. It was not very thick right then, but it was foggy though.
 - Q. How far could you see?
- A. Oh, I don't know, but somewhere inside of a mile.
 - Q. How many whistles did you hear from the "Mc-

(Testimony of William Kidston.) Cullough'' before you saw her?

- A. Maybe 2 or 3 or maybe 4 whistles.
- Q. Where were they blowing from?
- A. I think about right ahead, or maybe a little on the port bow—the first whistle.
- Q. Why didn't you stop your engine when you first heard the whistle of the "McCullough"?
- A. I did not think it was necessary, I thought I could see far enough ahead.
 - Q. You thought there was no danger of collision?
- A. No, because I had been speaking to her; I knew she was coming up. She had been talking to me by wireless all the time and I knew it was the "McCullough."
- Q. Well, Captain, suppose you did know it was the "McCullough," was that any reason for not stopping your engines?
- A. We were not going very fast. I had slowed my engines. I had the ship under perfect command.
 - Q. You did not stop, Captain, did you?
 - A. No, I did not stop.
- Q. And you did not stop because you felt there was no danger of collision?
 - A. I felt there was no danger of collision.
- Q. And you felt that the rule did not apply—is that what you thought, Captain, because you were in no danger of collision?
- A. Well, I was in distress, Mr. McClanahan; I was [780—657] coming into port with what might be a sinking ship; I didn't know whether her collision bulkhead would hold, or not.

- Q. How near to the light-ship did you pass?
- A. I would say not over a ship and a half's length off the light-ship; I had her on my starboard beam.
- Q. Captain, did you ever stop your engines on hearing a first fog signal forward of the beam?
 - A. Many times, many times.
- Q. What were the circumstances of some of the occasions, why did you stop?
 - A. Because I heard the whistle.
- Q. You heard whistles on the 22d of November, 1910, and you didn't stop?
 - A. The conditions did not warrant me to do so.
- Q. I want to know what the conditions were when you have stopped your engines on hearing the first whistle?
- A. A very thick fog and a certain condition of weather, a heavy wind, that I was not able to locate it very well, and it was safer to stop than to proceed.
- Q. In other words, you always stop when the weather is of such a character and the wind is such that you think danger of collision exists, and then you stop?
- A. Yes, and I have often stopped when I did not judge there was danger of collision; I have often stopped.
 - Q. What for?
 - A. Well, I have done it, that is all; I done it.
 - Q. You had no reason for doing it?
- A. I suppose I might have had at the time; I cannot recall just what times it was. I have got a reason for doing everything—primarily.

Q. Why did you put your engines at half-speed on the way back [781—658] and keep them there for 9 minutes?

A. I started first at a slow bell. I had an officer who reported to me the condition of the collision bulkhead; I didn't know how much of the bow was stove in, and then I put her at half-speed.

Q. Why didn't you know how much of the bow had been stove in and why didn't you know the condition of the collision bulkhead before you started back?

A. I did know that the collision bulkhead was not sprung before we started back, by an examination made by the carpenter, first officer and chief engineer, but after we started back I didn't know what effect that would have—the pressure, if there was a big hole in the bow, or the collision bulkhead, and I wanted to try it. So I first started with a slow bell and then I started with a half-speed bell, and after we were going awhile on that half-speed bell the first officer went down with the carpenter and sounded the tanks and looked over the bulkhead and reported to me that everything was in good condition, that there was no water, that she was not making any water. Then I sent for the chief engineer and I told him that on account of night coming on I wanted to get into port, if possible, that it was foggy, and a rough bar; I knew all this; and that I would hook her on full speed but for him not to press her too hard, somewhere around 74 or 75 turns. That

(Testimony of William Kidston.)
was a verbal message to him. I sent for him on the bridge.

- Q. That was her full speed, was it?
- A. That was her full speed, that I would ring her full speed but not to press her too hard.
- Q. Half-speed would be a little more than half of full? [782—659]
- A. At half-speed they might have been turning up 50 turns.
- Q. Ordinarily, Captain, when you telegraph down half-speed, it is a little more than half of full?
- A. Yes; well, we cannot regulate it on a ship like that; a slow bell was anywhere between 20 and 30 or 35 turns, and half-speed would be about 50 turns.
- Q. So that it runs a little more than the actual half of full? A. Yes.
- Q. You are familiar with the Pt. Reyes whistle, are you—you heard it blow? A. Yes, sir.
 - Q. Often?
- A. Well, I have not heard the new one blow very often because it had not been established so very long then.
- Q. There has been a change in the Pt. Reyes whistle, has there not? A. Yes, sir.
 - Q. It used to blow every 70 seconds?
 - A. The steam-whistle, I believe it did.
 - Q. The steam-whistle did? A. Yes, sir.
 - Q. And this is a steam-siren now?
 - A. Yes, sir.
- Q. The whistle has been changed and the interval of the sound has been changed too? A. Yes.

- Q. It blows 35 seconds now? A. No, it does not.
- Q. What is the length of the blast now?
- A. If my memory serves me right, I think it is 2 seconds.
 - Q. The intervals I mean?
 - A. Oh, the intervals, yes.
 - Q. The intervals is 35 seconds.
 - A. I think maybe it is, yes.
 - Q. And the former interval was 70 seconds?
 - A. Yes, sir.
- Q. The new whistle, the steam-siren, was on Pt. Reyes when you had the collision?
- A. I could not tell you whether it was a steamsiren or a compressed air siren. [783—660]
 - Q. Well, the change had been made?
 - A. The change had been made, yes.
- Q. You were on the "Beaver" on her trial trip, as I understand it, Captain? A. Yes, sir.
- Q. I want to ask you to verify some data which I gave to the experts used by me in this case, if you can.
- A. I don't think, Mr. McClanahan, that I can verify anything because on the trial trip the ship was in the hands of the builder and I was only there as a guest.
- Mr. McCLANAHAN.—I would like to have from you, gentlemen, a further admission in regard to this data. I think that you can make it safely, and I know you will if you can. I would like to have you admit that the builders of the "Beaver" if called would testify that this data is correct.
 - Mr. DENMAN.—You mean by that the data shown

(Testimony of William Kidston.) on the blue-prints?

Mr. McCLANAHAN.—I think so, yes. I will read you the data I gave the experts. I am reading from the testimony of W. E. Dickie, page 188 of the record:

"The speed of the 'Beaver' on her trial trip is said to have been 17.6 knots per hour; her draught on the trial trip was 13 feet 9 inches forward and 17 feet aft, and her corresponding or mean displacement at those draughts was 4400 tons. Her indicated horse-power is 4448, and the revolutions on the trial trip, the maximum revolutions, were 86. You may assume also that her displacement fully loaded on a mean draught of 19 feet 6 inches would be 5950 tons. You may assume that the pitch of her propeller on her trial trip was 22 feet and 3 inches, and you may also assume that that [784—661] vessel's displacement on November 22d, 1910, on a draught of 16 feet $4\frac{1}{2}$ inches was 4800 tons."

Mr. DENMAN.—That would be her mean draught?

Mr. McCLANAHAN.—Yes, that would be her mean draught.

Mr. DENMAN.—I cannot say as to admitting those facts, Mr. McClanahan, because I don't know whether they are true, or not. The data that we have here is extremely meagre. I have been unable to make any final determination of these matters since the time you have had the experts on the stand. As a matter of fact, my own mind was not illumined as to

its importance until you had them here. We will consult with the builders and advise you concerning that just as soon we can get word back.

Mr. McCLANAHAN.—I will say, Mr. Denman, that all of this data I think appears on your blueprints furnished by your builders.

Mr. DENMAN.— I do not think it does. I am not sufficiently qualified to pass on those blue-prints but my own search of the blue-prints indicates that they do not.

Mr. McCLANAHAN.—You will get that word as soon as you can, will you?

Mr. DENMAN.—As soon as I can. But I understand that that will not affect the closing of the case, that particular matter?

Mr. McCLANAHAN.-No.

- Q. Captain, what was the highest speed the "Beaver" made on her trial trip?
- A. My knowledge is only hearsay knowledge told to me by the officials of the building company who were taking that data.
- Q. Well, let us have it, whatever it was. [785—662]
 - A. They told me that she made 17.06 knots.
 - Q. You were on the ship at the time, were you?
 - A. I was on the ship at the time.
- Q. Don't you know what her draught was on that occasion?
- A. I did not know it at the time but I would not be positive about it now.
 - Q. Is my statement, 13 feet 9 inches forward and

17 feet aft, does that refresh your memory?

A. It seems about it, it seems about in that neighborhood; I would not be positive though. It seems to be in that neighborhood, however.

Q. Would the information of the blue-prints which show that to be her draught, would that refresh your memory so you could testify positively on that subject?

A. No, I would not testify positively as to the draught.

Q. Not even after you have inspected the blueprints and found the draught on the blue-print also?

Mr. DENMAN.—Q. Did you put the draught on the blue-print, Captain? Did you have anything to do with the drawing of the blue-print?

A. No. I did not.

Mr. McCLANAHAN.—You would not say it Captain, even after looking at the blue-print?

A. No, but it seems to me it is in that neighborhood. But I would not be positive.

Q. Do you know her corresponding displacement?

A. You mean to that draught?

Q. Yes. A. No, I never figured it out.

Q. And you did not know it at the time?

A. No, sir.

Q. Do you know her indicated horse-power?

A. Her indicated horse-power was 4000 or 4200, I forget which. [786—663]

Q. Was it not 4448?

San Francisco & Portland Steamship Co. 927 (Testimony of William Kidston.)

A. That may be; I am not positive on those points.

Q. Do you know what her maximum revolutions were on the trial trip?

A. They told me that the highest she attained was 86 revolutions.

Q. What was her displacement fully loaded on a mean draught of 19 feet 6 inches?

A. I never worked that up so I could not tell.

Q. You know the pitch of her propeller on the trial trip to have been 22 feet and 3 inches, do you not?

A. I was told so. I never have worked up the pitch of the propeller.

Q. Do you know the displacement of the ship on November 22d, 1910? A. No, sir, I do not.

Q. Do you know her draught?

A. I know what her draught was.

Q. What was her draught?

A. 14 feet and 3 inches forward and 18 feet 6 inches aft.

Q. That would be a mean of 16 feet $4\frac{1}{2}$ inches?

A. Yes, sir.

Q. This data which I have been talking about is data that you ought to know as master of the ship, is it not, Captain?

A. No, sir, I don't think so.

Q. If you had occasion to use that data, would you not turn to the information furnished to you by the builders and take it as authentic?

A. I would.

Mr. McCLANAHAN.—I think I will introduce in evidence the blue-prints furnished by the Newport News Shipbuilding & Drydock Company to the claimant in this case, being dated February 8, 1910, and consisting of four sheets of paper, purporting I suppose to be the data for the trial trip. I ask that [787—664] it be marked Libelant's Exhibit 20.

Mr. DENMAN.—We object to the introduction of this evidence on the ground that it is hearsay, and on the further ground that without further identification as to who made it and from what it was made up and by whom; it is immaterial, irrelevant and incompetent.

Mr. McCLANAHAN.—I would like to have the record show that the blue-print has been furnished to me by the attorney for the claimant.

- Q. Captain, the "Beaver" has the same officers that it had at the time of the collision, with the exception of yourself?
 - A. No, I don't think so.
 - Q. What changes have been made?
 - A. I think the third officer is not there.
- Q. The first officer is there and the second officer is there?
- A. The first assistant engineer is not there. Of the deck officers, the third officer is not there; in the engineer's department, I think two of the engineers are not on the ship now.
 - Q. Do you know where they are?
 - A. I think one of them is chief engineer of the

"Kansas City." I don't know where the other is. He may be there, but I don't know. That is my impression.

Q. Do you know what engineer was on duty in the afternoon of November 22d?

A. Up until 4 o'clock the second assistant engineer was on duty.

Q. He is still on the "Beaver"?

A. I think he is still on the "Beaver."

Q. What is his name? A. Townsend. [788—665]

Q. Now, Captain, we will do a little map work, with your permission. Here is a map of Drake's Bay, which I suppose you recognize, Captain?

A. Yes.

Q. An authentic, well-recognized map of that bay, it is not? A. Yes, sir.

Q. Now, Captain, I want you to be very careful, if you please, in the work that I am going to ask you to do. I want you to place on that map the point of collision as shown by your bearings; do you remember what the bearings were?

A. I am just trying to think; I have them.

Q. Now you have the Pt. Reyes bearing, have you? A. Yes.

Q. Now, will you please draw a line from Pt. Reyes, along the ruler.

A. (Witness does as directed.)

Q. Now, get your south end bearing. Now you have your rule on the south end bearing, have you?

- A. Yes. sir.
- Q. Please draw a line that intersects with the former bearing. A. (Witness does as directed.)
- Q. Now, the intersection of those two lines is the point of collision as shown by your bearing; is that correct? A. That is correct.
- Q. Will you please mark the south end bearing, the compass direction of it on the line.
 - A. (Witness does as directed.)
 - Q. That is northwest half north, is it?
 - A. Yes. sir.
 - Q. Now, will you mark the Pt. Reves bearing.
 - A. (Witness does as directed.)
 - Q. That is northwest by west half west?
 - A. Yes, sir.
- Q. Now, Captain, will you please put a point on this map 21/2 miles from Pt. Reves, it being the point that would intersect [789—666] your north 86 west course; do you understand what I mean? A. I understand what you mean.
 - Q. Will you please do that.
- A. It would be the point that should have been if I had a railroad track to run on and the ship didn't get off it; it is the point that I aimed for in setting my course.
- Q. Well, please put that on the map; its value will be discussed later.
- A. Any old woman could navigate a ship if all she had to do was to set a course and she knew she would get there, and that there was nothing in the way, that there was no fog.

Q. Captain, you have made a cross on the map on a line which extends from Pt. Reyes 2½ miles to the southward? A. That is the position which—

Q. Just answer the question.

A. I have made a cross.

Q. Will you please locate, if you can, on this map, the Duxbury whistle.

A. I don't think I will locate it on this map for you.

Q. Why not? A. Do you see it here?

Q. No, it is not here. Can't you locate it?

A. Not on this map I cannot.

Q. You see the end of the reef, don't you?

A. Yes.

Q. And don't you know how far it is from the end of the reef, or in what direction?

A. Yes, but it is not there though. If you give me the chart that it is on I will locate it, but not on this one.

Q. It is not my fault, Captain, that it is not on this map. A. I am sure it is not mine.

Q. Then using Libelant's Exhibit No. 2, Captain, will you please locate the Duxbury whistle on the map we are working at.

A. (Witness does as directed.) [790—667]

Q. Now, you have made a cross, Captain, have you, at a point on the map which would be Duxbury whistle; is that correct, Captain?

A. I consider it correct.

Q. Now, will you please make a point to the southward from Duxbury buoy one-half mile.

- A. (Witness does as directed.)
- Q. The second cross that you have made is where the "Beaver" passed the Duxbury buoy on that afternoon? A. No, I don't think so.
- Q. Well, that is half a mile to the southward, is it not?
- A. That is a half mile off where the reef buoy is, but I did not say that when we were abeam we were south of the buoy.
 - Q. Where were you?
 - A. I will tell you in a minute.
 - Q. That is what I want to get at.
- A. We were steering degree courses; I have to guess a degree on here.

Mr. DENMAN.—Q. Captain, it is north 4 east?

- A. It is not north 4 east. I know what I am doing. This is part of my business and I know what I am doing. I don't want any interference from anybody.
 - Q. Please accept my apology, Captain.
 - A. It's accepted.

Mr. McCLANAHAN.—Q. Captain, I have erased the first line you drew south of the buoy and you have put in its place a line on which you have made a cross which shows the correct bearing that you were from the buoy when you were passing; is that correct, Captain?

A. Yes, I think that is correct. There is one question I would like to ask you; why couldn't you give me an extended plan, a chart like this all the way through instead of giving [791—668] me a

chart that I have to go from one to the other on?

- Q. I would have done it, Captain, if I knew where I could get one. This is the only large chart of Drake's Bay that I could find.
 - A. There are two or three places that sell them.
 - Q. Larger than this? A. Yes.
- Q. All the reason I don't use Libelant's Exhibit 2 is the chart on which I am examining you now is because it is so much smaller than the one we are using?
- A. It makes it a little more complicated to be transferring from one to the other.
- Q. But you have done it correctly, have you not, Captain?
- A. Well, I may have made a little error, I don't know.
 - Q. Not a conscious error?
 - A. Not a conscious error.
- Q. We will mark the cross which you have designated as the location of the buoy with a "B"; we will mark the cross below the "B" which you designate as the place where you passed it, as "C." Now, Captain, referring again to the position or point that you have made $2\frac{1}{2}$ miles to the south of Pt. Reyes, will you please go over that and see if it is correct. I think there may be an error there.

Mr. DENMAN.—Do you mean the distance or the angle?

Mr. McCLANAHAN.—The angle, an error in the angle.

Q. (Continuing.) What I want, Captain, is your

(Testimony of William Kidston.) distance abeam on that course.

- A. All right, now I will give it to you.
- Q. Now, will you measure the line that you have drawn 21/2 miles, Captain, and there we will place a cross.
 - A. (Witness does as directed.) That is abeam.
- Q. Now, with your permission, I will rub out the first bearing and line, and we will mark this line that you have made "Pt. Reves 21/2 miles abeam." We will mark the Point itself "D." [792-669] Now, Captain, will you please draw a line from point "C" to point "D."
 - A. (Witness does as directed.)
- Q. Now, Captain, will you please the line you have drawn from "C" to "D"-"north 86 west"?
- A. Hold on a minute; I don't know whether it is, or not.
 - Q. Well, see if it is.
 - A. Yes, that is north 86 west.
 - Q. Just mark it, please.
 - A. Yes, north 86 west Magnetic.
- Q. Now, Captain, will you please mark on the north 86 west line the point of collision if the "Beaver" was making 11 knots from Red Buoy No. 2%

Mr. DENMAN.—I would suggest that Red Buoy No. 2 does not appear on this chart.

Mr. McCLANAHAN.-Q. It can be done, Captain, can it not?

A. Yes, but I will have a lot of trouble to do it. It cannot be done on this chart unless you paste a (Testimony of William Kidston.) piece of paper on it.

- Q. You can't put the Red Buoy on?
- A. I cannot extend it.
- Q. But you can tell how far the Red Buoy is from the point "C", can you not? A. I can.
- Q. And then you can tell how many miles or knots that is, and where the ship would be if she were going 11 knots per hour?
 - A. I certainly can.
- Q. You will accommodate me, Captain, if you will just do that for me.
- A. Only if I do so it will not be right; 11 miles an hour from Red Buoy will not be right, it will not give us any location where I would say she was.

Mr. DENMAN.—It is just a theoretical question, Captain.

A. A theoretical question, oh.

Mr. McCLANAHAN.—Q. You mean to say that the point of [793—670] collision as shown by the 11 knots would not be the correct point of collision—is that what you mean to say?

- A. That is what I mean to say.
- Q. I am not asking you to commit yourself to that, Captain. I am simply asking you where the point would be if the vessel travelled 11 knots from Red Buoy. She travelled an hour and a half then, did she not?
 - A. No, she travelled more than that.
 - Q. Did she travel more than that?
- A. Let me see, from 1:45 to 3:15—yes, that is right.

Mr. DENMAN.—I object to the question upon the ground that the testimony does not show that the vessel travelled at the rate of 11 knots from Red Buoy.

Mr. McCLANAHAN.—Q. Now, answer my question, Captain.

A. She was 30 minutes from Red Buoy to Duxbury; that is going at $5\frac{1}{2}$ knots.

Q. No, 6½ knots, is it not?

A. No, 11 knots an hour, that would be $5\frac{1}{2}$ knots in 30 minutes. The distance from Red Buoy to Duxbury was $6\frac{1}{2}$ miles, so she was just a mile from Duxbury in the half an hour. I have not got this on the chart—yes, I guess I can get at it. That is 11 knots an hour from Red Buoy No. 2. It may be a little out (indicating).

Q. I will mark the point on the north 86 west magnetic course which you say would be the 11 knots from Red Buoy No. 2. I will mark that "E." That would be the point of collision if the vessel was making 11 knots? A. From Red Buoy.

Q. Now, will you please give me the point of collision as shown by the run of the log from Red Buoy No. 2 without any deduction. [794—671]

A. (Witness does as directed.)

Q. Now, we will mark the distance run by the log as shown by you on the north 86 west magnetic "F." That is the distance without any deduction—is that right, Captain?

A. That is correct.

Q. Now, Captain, will you please, from the point of collision as shown by the bearings which you took,

which I will mark "G," will you please run a course south 65 east from Pt. Reyes to the point of collision.

A. That is Pt. Reyes.

- Q. I want you now to bring your ruler to the point of collision as shown by the bearings. Now, draw a line from your point of collision shown by the bearings along the ruler there and pass Pt. Reyes.
 - A. (Witness does as directed.)
 - Q. Now, mark that line please, "south 65 east."
 - A. Yes.
- Q. Now, will you please draw the same course running through the eleven knot point made on the map? A. Yes, sir.
 - Q. Now, draw a line there. A. How far?
- Q. Just as far as you can over Pt. Reyes, using that ruler. A. I can extend it.
 - Q. Now, mark that "south 65 east" please.
 - A. Yes, sir.
- Q. Now, will you draw the same course from the point as fixed by your log, Point "F," and mark that "south 65 east." Yes, sir.
- Q. What is the distance, Captain, from point "D" to point "F"? A. 51/4 miles.
 - Q. What is the distance from point "D" to "G"?
 - A. 53/4 miles.
 - Q. What is the distance from "D" to "E"?
 - A. 7½ miles.
- Q. When you speak of "miles" you always mean nautical miles? A. Nautical miles. [795—672]
- Q. Now, to make the record clear, Captain, the distance from "D," which is abeam from Pt. Reyes

(Testimony of William Kidston.) to "F" is 51/4 miles?

- A. It is less than a quarter. I will measure that again. It is $5\ 1/16$.
- Q. Well, do you wish to change your first measurement to 5.1/16? You said before it was $5\frac{1}{4}$.
 - A. Yes, that was wrong if I said it.
 - Q. It is 5 1/16? A. Yes, sir.
 - Q. "F" being the point shown by the log?
 - A. "F" being the point shown by the log.
- Q. The distance from "D" to "G," which is the point shown by your bearings, is 53/4 miles?
- A. Yes, sir, that is right—no, hold on a mintue, let me see that.
 - Q. That will have to be changed too?
 - A. That is right, anyhow, that is 53/4.
- Mr. DENMAN.—Q. Is that exact, Captain, or is it a little over or a little under?
 - A. A little over, a thirty-second.
- Mr. McCLANAHAN.—Q. The distance from "D" to "E," which is the 11-knot point, is $7\frac{1}{2}$ knots?
 - A. Yes, sir, 7½.
- Q. What is the distance from south N to point "G," that being the northwest half north bearing?
 - A. $4\frac{1}{2}$ miles.
- Q. What is the distance from Pt. Reyes to point "G," being your northwest by west half west bearing? A. 61/4 miles.
- Q. Will you please give me the distance from the line connecting Pt. Reyes with "D" to "G" along the south 65 east course. A. 6½ miles.
 - Q. I will mark the end of that line you have just

measured "H." What is the compass bearing of the line from "D" to Pt. Reyes? [796—673]

- A. It is about north a quarter east; it is a little more than a quarter. The degrees are not there. It is a trifle more than a quarter.
- Q. Well, for all practical purposes, it is north a quarter east? A. Yes, for all practical purposes.
- Q. Is it a quarter of a point or a quarter of a degree.
- A. A quarter of a point. It is a little more than a quarter.
 - Q. That would be north about 3 degrees east?
 - A. No, north about 4 degrees east, I should say.

Mr. McCLANAHAN.—I offer this map in evidence and ask that it be marked "Kidston's Libelants' Exhibit, Kidston 1."

Redirect Examinatiou.

Mr. DENMAN.—Q. In your examination by Mr. McClanahan, it was brought out that you had swung a number of points after the time that the full speed astern signal was given; you mentioned what points—do you recollect?

- A. I said between 5 and 6. I was not positive.
- Q. Are you accurate that it was 5?
- A. No, I am not accurate that it was 5.
- Q. Could it be less than 5? A. It might be.
- Q. Could it have been more than 6?
- A. I don't think it could be more than 6.
- Q. Could it be as low as 3?
- A. No. It could be less than 5 but I don't think more than 6.

Q. Could you say somewhere in between 3 and 6, or 4 and 6°

Mr. McCLANAHAN.—I object to the leading questions being asked the witness.

Mr. DENMAN.—Q. What I want to get at is, Captain, did you take any accurate observation?

A. No, I did not. I said in answer to Mr. Mc-Clanahan's question between 5 and 6; [797—674] now, I say it may be less than 5 but I don't think more than 6. How much less than 5 I don't know.

Q. You detailed us a conversation that occurred on the bridge of the "Beaver" after Captain Lie came up there. Did it impress you as rather strange that he should tell you the number of minutes he had been lying at a standstill? How did that come about in the course of the conversation?

Mr. McCLANAHAN.—I object to this as being improper redirect examination.

Mr. DENMAN.—This matter was gone fully into on the cross-examination.

A. The volunteer statement that Captain Lie made at that time did impress me as extraordinary, but I accounted for it in this way: he was very much excited, the man had been overboard, he just lost his ship, and after I had sympathized with him for the loss of his ship, I was sorry that it occurred, it impressed me as though he was trying to tell me that it was not his fault—the collision was not—in other words, I figured that he was trying to impress me that it was my fault, and to do so he told me that he had been lying dead still in the water for over 10 min-

utes and had heard my whistle. That is the impression it gave me at the time.

- Q. Did it make any difference to you as a matter of wrongdoing whether he laid there for one minute or 10 without blowing the two-whistle signal?
- A. No, it would not have made any difference whether he had been there one minute or 10 as long as he was not complying with the two-whistle rule.
- Q. You say that you came to my office in the month of January; did you bring any witnesses there?
 - A. Yes, sir. [798—675]
 - Q. How many—about how many?
 - A. 5 or 6; I forget which now; maybe it was 5.
 - Q. Were there others sent there, do you know?
 - A. Yes.
 - Q. About that time?
 - A. At or about that time.
- Q. Do you recollect at the hearing before the inspectors, that the inspectors called for further evidence from the "Selja" and that Mr. McClanahan took certain action in response to that request?

Mr. McCLANAHAN.—I object to that as immaterial.

A. Yes, sir.

Mr. DENMAN.—Q. What did Mr. McClanahan say, if you recollect?

Mr. McCLANAHAN.—I object to that as immaterial.

A. I don't recollect his exact words, but I know that Mr. McClanahan refused—I think it was about the Chief Engineer—he refused to put on any more

witnesses anyhow. I think it was the case of the Chief Engineer that Mr. Bulger asked him for.

Q. Do you recollect this conversation occurring on Friday afternoon, November 25th, 1910, at the offices of the United States Inspectors?

"Mr. McCLANAHAN.—I think we have given our statement sufficiently.

Inspector BOLGER.—Have you any objection to putting anybody else on the stand?

Mr. McCLANAHAN.—Yes, simply because it is not necessary to put them on the stand in this hearing.

Inspector BOLGER.—I would like to know if his engine was stopped, according to the log? [799—676]

Mr. McCLANAHAN.—I prefer not to have any of the witnesses put on for the Norwegian ship.

Inspector BOLGER.—We got part of it.

Mr. McCLANAHAN.—You got all of it. Well, I have said my say, I don't propose to put on any more witnesses. They can give you no more light than you have; I examined them and I know.

Inspector BOLGER.—According to that we are not competent, but we have been handling these cases for over twenty years. We think the engineer is essential in this case.

Mr. McCLANAHAN.—You have the evidence."

Do you recollect that?

A. Yes, sir, I recollect most of that.

Mr. McCLANAHAN.—I ask that all that be stricken out as immaterial, irrelevant and incompetent.

Mr. DENMAN.—Q. Was Captain Lie put on the stand after that, as a matter of fact?

A. Not to my knowledge.

Q. When was the hearing resumed, do you recollect? A. On Monday, I think.

Q. Do you recollect my attempting to get permission of the inspectors to put questions directly to the witnesses?

Mr. McCLANAHAN.—I object to that as immaterial; it is not proper redirect examination.

A. I remember that. I remember that the inspectors told you that any questions you had to ask the witnesses to ask it through them and they would put the questions.

Q. Do you remember that there were several questions put in writing by each of the counsel?

A. Yes, I recollect that.

Q. You were speaking of the effect of a current on the log and on the ship; now, as compared to distances shown on shore, and on the log, the current would have an effect on the comparison, [800—677] would it not? For instance, suppose a definite measured course on shore, and a current in which the ship and the log are floating, the current would cause a difference between the reading of the log and the actual true distance traveled, would it not? It might add or might subtract from the distance?

- A. I don't understand what shore-measurement you are referring to.
- Q. Suppose you are passing known fixed points on shore. A. Oh, yes, passing fixed points.
- Q. And that your log is out, and that there is a current against which you are traveling. Now, as between the actual distance and the distance shown by the log, the log will differ from the actual distance, will it not? A. It certainly should.
- Q. The ship and the log, however, are floating at the same rate in the current, are they not?
 - A. They are.
- Q. What do you say as to the variation between the log and the distance shown by the engines? Will the current affect that to any appreciable extent?
 - A. It will.
 - Q. To an appreciable extent?
 - A. Not to a very great but it will to some extent.

- - 4

- Q. How do you account for that?
- A. If you have a strong current with your ship—I have had a current with the ship where the slip was negligible.
- Q. That is, the slip as compared with the shore line or fixed points? A. Yes, fixed points.
- Q. I am presuming now that you cannot see any fixed points and that you are floating in the fog. Will the current which is carrying the ship along and carrying the log along at the [801—678] same time, presuming now you were in the current and you were not moving at all, the ship and the log would presumably float at the same rate through the cur-

rent? A. If attached to each other, yes.

- Q. Now, presume that you are going ahead, would the current affect the log any more than it would the ship, as you move through the current?
 - A. With the current against us or with us?
 - Q. Well, either way.
 - A. It will affect the log more than it will the ship.
 - Q. Aren't you both moving at the same rate?
 - A. They are both moving.
- Q. Is not the log moving at the same rate as the ship—supposing you are in smooth water now?
- A. Yes, sir. The log is going through the water and is being dragged at the same rate as the ship, but the action of the current—the rotator is revolving quicker with the current against it than if there was no current.
 - Q. How do you make that out, how can that be?
- A. Well, I don't know, but that is my theory from experience, that the current makes the log over-run the ship's distance more than it would than if there was no current against it.
 - Q. You refer to fixed points on shore?
- A. Without any points, without fixed points on shore. I am referring to fixed points by the sun from one day's run to another, by observation. In many places in mid-ocean where we have strong currents we fix the ship's position by observation of the sun from noon one day until noon the next.

(An adjournment was thereupon taken until tomorrow, Saturday, July 22, 1911, at 11 A. M.) [802—679]

Saturday, July 22d, 1911.

[Testimony of John K. Bulger, for Claimant.]

JOHN K. BULGER, called for the claimant
"Beaver," sworn.

Mr. DENMAN.—Q. What is your occupation?

- A. United States Local Inspector of Steam Vessels.
 - Q. How long have you held that position?
 - A. Close on to 21 years.
- Q. Your duties involve the investigation of accident cases and the investigation of the acts of licensed officers on steam vessels, the examining and licensing of officers, and particularly engineers?
 - A. Yes, sir.
- Q. Do you recall the collision between the steamer "Beaver" and the steamer "Selja" in the month of November, 1910? A. Yes, sir.
- Q. Do you recall a conversation, or did you have any conversation with Captain Lie of the steamer "Selja," on or about November 25, 1910, the day of the investigation before you as to the causes of that collision? Did you have any conversation with him?
 - A. As to the causes of the collision?
 - Q. Yes.
- A. I had a conversation with the Captain in the morning when he came into the office.
 - Q. What was that conversation?
- A. I could not recollect it verbatim but it was in relation to the investigation, asking him to appear there as a witness, with the officers of his vessel. As I recollect it he told me that there was to be an in-

vestigation before his consul. I asked him if he would telephone and see if we could set the case for that day. We set the case, as I recollect it, for one P. M. or 1:30 P. M.

- Q. Are you speaking of the Norwegian Consul?
- A. I could not say. [803-680]
- Q. Some foreign consul? A. His consul.
- Q. During the course of that conversation did he say anything about the circumstances leading to the collision?

Mr. McCLANAHAN.—I object to the question. Captain Bulger is now engaged in telling the conversation, let him exhaust his memory.

- Q. Can you tell the conversation, Captain?
- A. To the best of my recollection I will tell you just what happened; it is brief.
 - Q. That is what we want.

A. I spoke to the captain. I cannot tell you the exact words, but when we got to a point where the captain told me that he had been stopped for 10 minutes, I asked the captain if he was blowing his whistle; he said yes, that he was blowing a fog whistle. At that point I said to the captain, "We don't wish to take any advantage of you, Captain, I think it would be advisable for you to have your attorney here to represent you." The captain went away and returned in the afternoon with Mr. Mc-Clanahan as his attorney.

Mr. DENMAN.—Q. Is that all there was to the conversation?

A. That is all I can recollect at this present

(Testimony of John K. Bulger.) moment but I can continue about what happened if you want the rest of it.

Q. I am speaking about the conversation in the morning. How long did he say the "Selja" had been stopped?

A. He told me the "Selja" had been stopped 10 minutes.

- Q. And was it a fog-signal that he had given?
- A. Yes, a fog-signal; he was blowing his fog-signals.
 - Q. Did he say how many whistles he blew?

A. No, sir, not that I can recollect just at this time. I [804—681] took the fog-signal for to be one signal; that is, he told me that he was blowing fog-signals.

Cross-examination.

Mr. McCLANAHAN.—Q. Did he say or did you understand clearly what he meant by the statement that the "Selja" had been stopped about 10 minutes, Captain? Did you understand that he meant that the "Selja" was dead in the water or that her engines had simply been stopped?

A. When I get it from the bridge that a ship is stopped I take it that she is stopped through the water. When I get it from the engine-room I take it that her engines are stopped. I would think that when the captain said his ship was stopped that her headway was stopped.

Q. That is what you thought?

A. That would be my opinion, taking it from the master's standpoint. But from an engineer's stand-

point, without his engines had been reversed, I would take it that his engines had been stopped but not the headway of the ship.

- Q. So that when you got this information from Captain Lie, you understood that it referred to the stoppage of the "Selja" headway through the water?
- A. Yes, sir, and I thought he was blowing the wrong signal at the time, and as soon as I thought that I told him to get an attorney there to represent him. That is the reason I told him to get an attorney, so that everything would be fair—that is all.
- Q. You felt that this was a dangerous statement for the captain to make?
 - A. I did feel that; that is, taking him unawares.
- Q. You thought that if he had stopped the headway of his ship for 10 minutes he was grossly in fault for not blowing two whistles? [805—682]
 - A. That is my opinion of it.
- Q. Did he say when the stoppage of the "Selja" had taken place?
- A. You mean at the time that he conversed with me?
 - Q. Yes. A. No, sir.
- Q. He just said that the "Selja" had been stopped for 10 minutes? A. Yes, sir.
- Q. But did not place that particular stoppage, that is, as to the time, he did not say when it was ?
 - A. Not to the best of my recollection.
- Q. Do you remember where that conversation took place?
 - A. Yes, it took place in the consular building, just

- Q. And it was at that time then that he opened up and told you that the "Selja" had been stopped for 10 minutes?
 - A. I asked him; I asked him what she was doing.
 - Q. Oh, you asked him for an account of it?
- A. I asked him. He never made any admissions to me.
- Q. What was your object in asking him in this informal way for an account of the accident?
- A. Well, everybody is supposed to make a report, you understand, and in lieu of the report I asked him the questions. All licensed officers make a report first but he not being under our jurisdiction did not make a report. He did not have to make a report. I asked him to make a report and to bring his logbooks there.
 - Q. This was before the investigation commenced?
- A. Yes, I just had a few words with him, as I tell you.
- Q. I want to know why, before the investigation, you were asking him for an account of the accident. Was it in order to assist you in the hearing that was to follow?

 A. Not necessarily.
- Q. Well, what was your purpose—I don't know what it was.
- A. It was just an offhand question. The captain of that ship was not on trial before me. I had nothing to do with him. I told him that at the time. I had nothing to do with the captain there because he is foreign to our rules and regulations. I merely wanted him in the case as a witness against the cap-

(Testimony of John K. Bulger.) tain of the "Beaver." [808—685]

- Q. You wanted to get information from him that would assist you in passing upon the merits of the matter at the hearing?
 - A. Well, not necessarily.
- Q. Whether necessarily or not, did you not want to get information to help you in the case?
 - A. To help me in the case?
 - Q. Yes.
- A. No. I can pass on a case without getting assistance from the outside.
- Q. Well, Captain, don't you get all the information you can get in passing upon a case?
 - A. Before the case commences, do you mean?
 - Q. At any time.
- A. We like to get all the information we can at the start, no matter what source we get it from.
- Q. And was not with a view of getting all the information you could about the case, that you had this conversation with Captain Lie?
 - A. I don't think so at that time.
 - Q. Well, what was your object in doing it?
 - A. What was my object?
- Q. Yes, why did you ask Captain Lie these questions about the collision?
- A. In just an offhand manner—that is all. I was not trying to elicit anything from him at all.
- Q. No, I don't say that you were; but do you mean to say that you did not have in mind the advantage that that information would give you when you sat in judgment on the case? Didn't you have that in

- Q. Bearing on the case itself and on the fault for the collision?
- A. Well, the fault of the collision—we never got that far in the case, because he refused to testify any further and we could not get his logs; we could not get his statements, we could not get anything else on account of the advice of his attorneys—to arrive at a conclusion—or his attorney, rather.
- Q. You have not answered the question, Captain. Please answer the question. I will have it read to you.

(Question read by the Reporter.)

It was an important admission, was it not, Captain, bearing on the case itself and on the question of fault?

Mr. DENMAN.—You mean whose fault?

Mr. McCLANAHAN.—Anybody's fault.

Mr. DENMAN.—It is presumed that there is but one fault [811—688] in the case.

A. I cannot answer that question.

Mr. McCLANAHAN.—Q. You have just told me that this was a dangerous admission that he was making to you. In what way was it dangerous? It bore directly, did it not, on the question of the fault for the collision itself?

- A. If he was to have admitted it on the stand, yes, sir.
- Q. It bore directly on the question of the fault for the collision?

A. It would have if he had admitted it, which he refused to do.

San Francisco & Portland Steamship Co. 957 (Testimony of John K. Bulger.)

- Q. You say that he refused to make this admission on the stand? A. Yes.
- Q. The captain was put on the stand, then, that day?

 A. He was put on the stand as a witness.
 - Q. And he was sworn? A. And he was sworn.
 - Q. And gave testimony?
 - A. And gave testimony.
 - Q. And you asked him questions, did you not?
 - A. I did.
- Q. You asked him questions with reference to the stopping of the "Selja," did you not? A. I did.
 - Q. And with reference to his blowing two whistles?
 - A. Yes, sir.
- Q. Captain, you have said that he refused to produce his log; did he not produce his log?
 - A. His engineer's log.
 - Q. Did he not produce the ship's log?
 - A. The engineer's log is what I am talking about.
 - Q. He refused to produce what?
- A. The engineer's log of the ship, and refused to allow the Chief Engineer to testify so that I could cross-examine him.
- Q. You mean, then, that he refused to produce the engineer's log? A. Yes, sir. [812—689]
 - Q. But he did produce his own log?
- A. I think it was produced there, or an abstract of it; I think so.
 - Q. Is not your memory good?
 - A. Well, it is pretty fair.
 - Q. Only fair? A. Just at this time, yes.
 - Q. Only fair at this time?

A. Yes, sir. I will tell you one thing, anything I tell you in the case will be strictly honest. I am not influenced in the case. Nobody can influence me, either. I merely say this: That I am here as a witness in the case to tell you just what happened on that day. That is all.

Mr. DENMAN.—Mr. McClanahan is not accusing you, Captain.

The WITNESS.—I am not saying that he is.

Mr. McCLANAHAN.—Well, don't get excited, Captain, we will get along nicely. Don't you remember that you read this log of the captain's which he had produced as his sworn statement of the collision?

- A. That I read it?
- Q. That you read it.
- A. I don't recollect reading it. I recollect seeing an abstract of it.
- Q. I refer you now to the transcript of the evidence, page 1, at the bottom, where it says, "Inspector Bulger read abstract from the log of the steamer 'Selja' and afterwards the statement of Captain Kidston of the steamer 'Beaver.'" That is where you get your cue that you read an abstract, is it?
- A. I beg to call that—that is a clerical error in there.
 - Q. What is?
- A. Putting Inspector Bulger there instead of Inspector Bolles. I never read the master's abstract of the log of the ship or asked him any questions on it.

- Q. Well, whether that be so or not, let us turn to pages 30 [813—690] and 31 of the transcript of the evidence, and I will ask you if that is not the document which was read either by you or by Inspector Bolles. A. What paragraph?
 - Q. The whole business, pages 30 and 31 ?
- A. I will say that it was introduced in evidence, but I never read it.
 - Q. Well, it was read in your presence?
- A. I don't think so. I will let the captain answer that and if he says yes, I will admit.
- Q. Well, it was read in your presence. I was there.
- A. Well, if that is it, if I can't recollect it I will say yes, that is all. I don't recollect it, though.
 - Q. You don't recollect it being read?
- A. No, sir. These statements are put in and copied and put in as part of the evidence. I never recollect ever reading that statement or that I heard it read.
 - Q. Or having heard it read?
 - A. Or having heard it read.
- Q. However, if I state to you as between man and man that it was read, and that I heard it, and that you were there—
 - A. (Intg.) I won't dispute it.
 - Q. You won't dispute it? A. No.
- Q. It is simply a lapse of memory—that is all, is it not?
- A. A lapse of my memory, if anything, yes. If you were there and heard it read and if you went on

the stand and said it was read I would not dispute you on it. But I never read it, or heard it read, to the best of my knowledge.

- Q. How does it come that it is in a copy of the transcript of the proceedings that you have in your possession now and that you are examining? [814—691]
- A. Because it was introduced in evidence in the case.
- Q. Introduced as evidence in the case, and you never read it?

Mr. DENMAN.—Do you mean before or after that morning ?

Mr. McCLANAHAN.—Just excuse me, Mr. Denman; I will deem it a great favor if you will keep out.

A. I will answer the question: I never read it, to the best of my knowledge, and being that it is right in here, too.

- Q. You never read it?
- A. To the best of my recollection. I don't say I did not, but to the best of my recollection I never read that in the transcript there, in the back of it. But I read the proceedings in the case.
- Q. That is a remarkable statement for you to make, is it not, inasmuch as you were a judge in that case?
 - A. It is remarkable, yes, sir.
 - Q. Because you were sitting as a judge in the case?
 - A. Yes, I was.
- Q. And it is very important, is it not, a sworn statement coming from one of the officers in the case?
 - A. This statement is important if introduced in

the case relating to the other people, the "Selja's" case. But when they refused to testify I eliminated all their testimony so far as I was concerned, and I said so on the stand at the time. When they refused to let me bring the chief engineer there to crossexamine him, to get notes from him as to whether the engines were stopped, or not, we dealt alone with the captain of the ship on the evidence that was given. There was no evidence given against the captain of the ship, against the chief engineer, nor was his log produced that I asked for, for the simple reason that I wanted to cross-examine the captain, and when it came to the point that I asked for the engineer's log to [815-692] be produced there to find out the speed of the ship, whether she was going full speed, or stopped, or backing, or anything else, you refused to allow any of them to testify. You refused to allow the chief engineer to testify. On that point I dropped the "Selja" end of it and took the testimony that is in here—against the captain or for the captain—whichever it was, that is, the testimony up to that without taking those into consideration. Possibly if the evidence had been kept up or been given by this captain and his engineers of the "Selja" it may have put a different phase on the case.

Q. So, as I understand it, Captain, when you were refused by me the opportunity of examining the chief engineer of the "Selja," you then from that time eliminated from the proceeding and the hearing all the evidence that had been given prior to that by

(Testimony of John K. Bulger.)
Captain Lie and his third officer?

- A. No, sir, I beg your pardon. It is in the minutes up to this time, the captain's statement.
- Q. What was it you said you did eliminate after you were refused the opportunity of examining the chief engineer?
- A. I had nothing to go on; we had to eliminate everything then.
 - Q. That is what I am saying.
- A. We had nothing to go on. If the chief engineer had produced his log-book and shown the speed of the vessel, and had given me a chance to find out the facts of the case, I don't know what would have happened.
- Q. You eliminated, then,—because of that refusal by myself—all of the evidence you had heard given by the "Selja's" officers?
 - A. What else could I do?
 - Q. Well, that is what you did?
- A. That is what I did, yes, so far as I am personally concerned. What Captain Bolles did [816—693] is another consideration.
- Q. And also, by that same process, you eliminated all consideration of the "Selja's" log which had been introduced?
- A. Personally I did, yes, but Captain Bolles is the man who took that part of it into consideration.
- Q. You had not forgotten, Captain, had you, when you were examining Captain Lie under oath, that he had made a statement to you a few moments before that, that the "Selja" had stopped, as you under-

stood it, her headway in the water for 10 minutes—you had not forgotten that when you were examining Captain Lie, had you?

A. No, I had not forgotten it but I know what he testified to afterwards because I have the notes here.

Q. I am going to read what he testified to and see if you have a recollection of having heard that testimony. This examination which I am now about to read, is your own examination of Captain Lie.

Mr. DENMAN.—Are you sure of that, Mr. Mc-Clanahan, or was it by Mr. Bolles?

Mr. McCLANAHAN.—It was by Mr. Bulger.

Mr. DENMAN.—I want to make certain that you are getting the right inspector.

Mr. McCLANAHAN.—I don't want to take any advantage of you, Captain Bulger.

The WITNESS.—I will answer your question, Mr. McClanahan.

Mr. McCLANAHAN.—Ql Yes, all right, but I want to put Mr. Denman on the right track. I am going to commence to read at page 9, the second to the last question from the bottom of the page. You asked Captain Lie these questions and he gave these answers to you:

"Q. If you were stopped 5 minutes why didn't you blow two whistles?

A. Because she was going ahead yet. [817—694]

Q. When the engines are stopped, does the law say you shall blow two whistles? A. No."

Mr. DENMAN.—There is something omitted in

between there, you are not reading it all.

Mr. McCLANAHAN.—I will state for your benefit, Mr. Denman, that I am reading only the examination pertaining to the stoppage of the "Selja" and the failure to blow two whistles.

Mr. DENMAN.—But you are taking out of sentences. It is running along here sentence for sentence and one fits the other.

Mr. McCLANAHAN.—I am reading only the evidence pertaining to the question of stoppage and the question of blowing two whistles.

Mr. DENMAN.—Well, all the evidence there refers to the time of stoppage.

Mr. McCLANAHAN.—Well, you can take that up on redirect examination, I don't like to be interrupted.

Mr. DENMAN.—I am simply calling the attention of the witness to the fact that you are not reading all the testimony to him.

Mr. McCLANAHAN.—If you put the transcript in the hands of the witness he can probably call that to his own attention.

Mr. DENMAN.—He can't do that and also listen to you while you are reading the questions.

Mr. McCLANAHAN.—"Q. Your vessel is practically stopped at that time?

A. No, as soon as my vessel has headway I cannot blow three whistles'—I think that is an advertence, I think it refers to two whistles.

Mr. DENMAN.—That is not part of the testimony, is it?

Mr. McCLANAHAN.—No, that is my remark.

- "Q. Your engines were stopped 5 minutes and you still had [818—695] headway on the ship?
 - A. Yes, sir.
- Q. How fast were you going through the water?
- A. 3 or 4 knots. She would not slow herself in 5 minutes. She will only swing around, a tramp like that. Her power at stern is not full enough.
- Q. You did not consider it necessary to blow two whistles that your engines were stopped?
- A. I just told the third officer to hold on the two whistles until I told him.
- Q. Was she on the point of stopping? A. As I said before, when I blowed three whistles I was then at the point of blowing two whistles to show that I had stopped. Then the steamer looked up and she blowed three whistles at same moment, then I backed engines and blowed three whistles.
- Q. Why didn't you back when you heard the vessel approaching?
- A. Because I was still—I was just moving a little. Too, I was navigating as carefully as I could because I did not want to alter my course on a whistle. I never alter my course on a fogwhistle. I would sooner stop my vessel. I could see three ship-lengths. I was quite certain I could stop my vessel before the other would

run into me, if she was in the same speed.

- Q. Do you think if you had blowed those two whistles when you stopped it would have avoided the collision? A. I don't know.
- Q. How many whistles did you hear on the 'Beaver'?
- A. I heard nearly 15. I heard whistle of 'Beaver' at 3 o'clock.
 - Q. How long after that did you stop?
 - A. I stopped 10 minutes later.
- Q. When you heard that whistle, if you had given two whistles that you were stopped, do you think the collision would have been averted?
- A. I don't know, because I [819—696] could not blow two whistles.
 - Q. You could blow your fog-signals?
 - A. Yes, sir.
- Q. When you blow fog-signals you are under way? A. Yes, sir.
- Q. When you blow two whistles you are stopped? A. Yes, sir.
- Q. When you blow two whistles your ship is stopped through the water? A. Yes, sir. That means the ship is done in the water.
- Q. How long would she run after your engines were stopped? A. About 5 minutes. I was going to blow three whistles. I gave three to back her. She was stopped at the moment I gave three whistles.
- Q. When you stopped your engines dead still, you are virtually stopped?

A. We are not allowed to blow as soon as we stop our engines. We may be going 15 or 20 knots."

Do you remember that testimony?

A. Nearly all of it, yes.

- Q. Now, do you remember just at that point, that Inspector Bolles turned to you and said, "When she is stopped through the water, when there is no way on her"; do you remember that? A. Yes.
- Q. Do you remember, Captain, that you were a little confused as to the meaning of the rule?
 - A. It looked that way, yes.
- Q. It looked that way, and Bolles was setting you right in the matter?
 - A. Yes. I have a right to continue now haven't I?
- Q. Yes, I am not going to stop you. Now, do you see any evidence at all in that record of a present recollection on your part—present at that time—of this statement that Captain Lie had made to you a few minutes before?

A. Just exactly the point where I had it too. I knew that if I could get the engineer's log and verify the 10 minutes I didn't want to go any further. I called for the log of the [820—697] engineer and wanted to put the engineer on the stand at that time for the simple reason to find out how long those engines had been stopped, and taking the difference of time between that and the collision and finding out whether the statement he had previously made to me was correct, or not. That was my object.

Q. What was your object in not asking him directly

(Testimony of John K. Bulger.)
under oath whether his previous statement was correct, or not?

- A. Asking the captain under oath?
- Q. Yes.
- A. I had asked him that right in your questions there, how long his ship was stopped. I did not say to him on the stand that you told me this morning that you had been stopped for 10 minutes.
 - Q. Why not?
- A. Because I was waiting for to get the engineer's log. Every man has his own way of conducting a case, and I was waiting. That was my main point. Just at that point I called for the engineer's log and wanted the engineer to appear on the stand either to verify this or sustain the captain.
- Q. You did not want then that Captain Lie should be given an opportunity himself on the stand of making some explanation that would reconcile his statement of the morning with the sworn statement, but you preferred to catch him by calling for the log—is that the idea?
- A. I did not prefer to catch anybody. I supposed that the log would show facts. Without asking questions and without producing logs you cannot get at facts. I have not anything against Captain Lie, or anything favorable to anybody else.
- Q. Suppose the log had been produced, and it had not shown that the ship had been dead in the water for 10 minutes before the collision? [821—698]
 - A. I would have accepted it.
 - Q. You would have accepted the log?

- A. I would have accepted the log.
- Q. Will you tell me how the engineer's log of the "Selja" would show that she was stopped in her headway through the water for 10 minutes?
 - A. I would have asked the engineer if—
 - Q. (Intg.) I am talking about the log?
- A. Well, I would have to ask the engineer about the log. I would have taken the log and I would have asked him, in this log was this time put down as you received the bells from the bridge? How long does it take you to stop your headway on that vessel? If those engines had been stopped for 15 or 20 minutes, or for 10 minutes,—I don't know when she will stop her headway, I have no knowledge of it up to this time; I might have if I had the engineer's evidence. Without it nobody alive could tell whether she would run 4, 5 or 6 miles, or 2 miles. But if I had that, I could verify the evidence in the case and would know what I was talking about.
- Q. That is, you mean to say that the engineer only can tell when the ship has lost her headway?
- A. The engineer and the master are the only ones in the country who could tell that.
- Q. Now, leave out the master. You say the engineer is the only man who would know that?
- A. He is the only man who would know what the engines could do.
- Q. No, not the engines but the ship, how long it would take the ship to lose her headway.
- Mr. DENMAN.—He said the captain and the engineer.

Mr. McCLANAHAN.—Mr. Denman, please don't interrupt me.

Q. Didn't you say that no man in the country but the engineer [822—699] would know?

A. Yes, I said it. The engineer would know what his engines were doing.

Q. I am asking you about how long it would take the ship to stop her headway; would the engineer know that?

A. The master of the ship would know it. He said he was looking over the rail and was waiting, with the mate's hand on the whistle, to see her headway stop in the water before he would blow the two whistles.

Q. How were you going to get from the engineer's log any data which would enable you to contradict or confirm Captain Lie's statement about the "Selja" having been stopped in her headway for 10 minutes?

A. When the captain got on the stand he said her headway was nearly off after 5 minutes. I wanted to get the bells from the engineer to find out at what time—we had the time from the captain—to find out at what time the bells were rung to the engine-room and then take the difference between the time and see whether that was correct, or not.

Q. How were you going to find out from that?

A. The captain's statement that the headway was dead in 5 minutes, and whether the bells were given 5 or 10 minutes before, or an hour before was the point I wanted to get at. I didn't know anything about it.

- Q. You were quite provoked, were you not, because of the refusal of Captain Lie's counsel to put the engineer on the stand?
 - A. What do you mean by "provoked"?
 - Q. Piqued, angry?
 - A. Why should I be angry?
- Q. I am asking you the question whether you were, or not.
- A. No, I was not angry then, no more than I am at the present time.
 - Q. You are not angry now, are you? [823-700]
- A. To your thinking I might be. I would like to have had him on the stand to find out the cause of the collision and how it happened.
- Q. Had you not had the log of the officers of the ship? A. I did not have the engineer's log.
- Q. No, you did not have the engineer's log, but you had the log of the ship.
 - A. Have I the right to ask you a question?
 - Q. I can't prevent you from asking me questions.
- A. I don't know whether it would be a point well taken, or whether I have any right to ask it. I would like to ask you a question.
- Q. You had also the statement under oath of Captain Lie, and the opportunity to cross-examine, did you not?
 - A. Captain Lie refused to answer later on there.
 - Q. The Captain refused to answer what?
- A. He refused to answer one question in the case when we could not get the engineer's log.
 - Q. What did he refuse to answer? You said the

captain refused to answer. You meant the captain of the "Selja." What did he refuse to answer?

- A. He refused to produce the engineer and the engineer's log-book, by advice of his counsel. Is that correct, or not?
 - Q. That is correct.
 - A. Well, to my mind that is a refusal.
- Q. There was nothing he refused to answer, was there?
- A. That is a refusal so far as I would take it. To answer his own questions, no, he did not refuse.
- Q. You also had the opportunity to examine and did examine [824—701] the third officer of the ship, who was on the bridge at the time of the collision; do you remember that?
 - A. Just read it there.
 - Q. Let me read you some of his testimony.
- A. I heard the testimony of every witness who was on the stand.
- Q. I will read you the testimony of Third Officer Bjorn on this question of the speed of the "Selja."
 - A. What page is it on?
 - Q. It follows right after Captain Lie's testimony:
 - "Q. Was your vessel stopped before the collision?
 - A. Yes, sir, it was dead slow. Asked Captain if I should give three whistles."

And I again say here for myself, Mr. Denman, that I think that should be two whistles, that is a clerical error.

"But Captain said he is going little ahead be-

cause there was heavy swell from astern.

Q. She was forging through the water? A. She was moving little ahead. I asked Captain if I should blow three whistles—and I again say that that should be two whistles. He said, no, as she had way on."

And then a question by Mr. Bolger:

"Q. How long time was it from the time your ship stopped her engines until the collision occurred?

A. It was stopped about 3:10; collision occurred at 3:15 or 3:16.

Q. What speed was 'Selja' going when engines stopped?

A. Not very much, she was dead slow.

Q. How many knots would that be?

A. I should judge 3 or 4."

Did you, when you examined Mr. Bjorn at that time, have in mind this admission, this dangerous admission, which Captain Lie had [825—702] made to you out in the hallway?

A. Not after Captain Lie's statement that he was there for 5 minutes. I had no way for making a verification. And I will tell you right now that Captain Lie made that statement to me or I would never have made it. I had it noted on the day that he made it to me in the office. And further than that, I will let him answer the question himself whether he said it, or not, and I will take his word for it right now.

Mr. DENMAN.—Q. Captain Lie is right here now

in front of you, is he not, Captain Bulger?

A. Yes, that is Captain Lie (pointing). I will take his word for it.

Mr. McCLANAHAN.—Q. Captain Bulger, what do you mean by that? Do you mean you may be mistaken?

- A. No, I am not mistaken.
- Q. Well, why would you take his word for it?
- A. I will take his word for it. If he says I am mistaken, let him say it. The reason I say that is that I would not accuse anybody unless I was correct about it, that he made that statement.
- Q. I didn't quite understand your statement that you would take his word for it. Do you mean by that, that if he says he never made that statement to you, that you would believe him?
 - A. No, I could not say that.
 - Q. Well, what did you mean?
- A. Well, I think he is an honest man and I think he will tell the truth. That is exactly what I mean by it. I think he would tell the truth; I think he is an honest man, and I would depend on him.
- Q. My question is, Captain, what did you mean by saying that?
- A. I mean to say this, that the man will admit that he told me that. He may have made a mistake when he told it to me. How about that? [826—703]
 - Q. Is that a question to me? A. Yes.
- Q. I think it would have been a very great mistake if he ever made that admission to you.
 - A. Well, he may say he made a mistake, or that

he didn't say it.

- Q. You see, Captain, sometimes we get to thinking about a matter that is suggested to us perhaps, and thinking it over and pondering over it until we begin really to believe something that never existed.
 - A. I don't; I am not one of those kind.
 - Q. You are not? A. No, sir.
 - Q. Didn't you ever hear of that phenomena?
- A. I know lots of people who believe lots of things that they hear.
- Q. Now, here are two honest men, you and Captain Lie, and I assure you that you are going to clash and be diametrically opposed in your statements as to that conversation. I do not want to say that you are wilfully misstating it.
 - A. I don't think you could say that.
- Q. And therefore I am suggesting to you that there is a natural phenomena that takes place sometimes in the human mind. We dwell upon a thing that never happened so long until we finally believe it did happen?
- A. Yes, I have come in contact with a great many of that class in my time. I merely come here to make a statement of what was told to me on that morning to the best of my knowledge and belief, and I have sworn to under oath, and it is a fact. That is all there is to it. Whatever bearing it has on the case, pro or con, it does not make any difference to me. [827—704]
- Q. And it didn't matter to you at the hearing, did it?

A. That is an absurd question. I wanted to get all the information I could. I want to call your attention to one thing, I have been at that office for 21 years and nobody can impeach me for not getting at the facts of a case and dealing honestly with them.

Q. We know you have a remarkable reputation for that.

A. Oh, I am not looking for any reputation, but I know that that is correct.

Q. You have not any further explanation, Captain, than that which you have made, as to why, when you had the opportunity of examining Captain Lie under oath, and of examining his third officer, you did not refer to this conversation—to the statement in the conversation which had been made to you but a few minutes before?

A. It was not a few minutes before, it was in the morning and this was in the afternoon—two hours.

Q. Well, with that correction, you have not any further explanation to make of why you did not refer to it?

A. No, because I thought the witnesses who would follow would bring out the full explanation of everything, if any explanation was to be made. The stopping of the engineer from producing his logbook and letting me look at it and giving his evidence, did not look just to be right to me at the time so I quit. Not having anything to do with the "Selja" we proceeded with the case of the officers of the steamer "Beaver" for the collision.

Q. You knew, did you not, that Captain Lie was

there out of courtesy to your office in giving his testimony?

- A. Yes, he was there out of courtesy. I found that out afterwards. I thought we had a right to subpoena him. [828—705]
- Q. And you know that his third officer was put on the stand out of courtesy?
- A. Just let me ask you a question: Was there any discourtesy shown to Captain Lie when he was on the stand in my office?
- Q. You want me to answer that perfectly frankly, Captain? A. Yes, I do.
- Q. I believe Captain Bulger, that you were very discourteous to Captain Lie.
 - A. In what way.
- Q. Just wait a moment. You have asked me a question and I am going to answer it. And that was the reason why I refused to allow any more of the "Selja's" officers to be examined.
- A. I am surprised to hear you make that statement. With a man of your reputation as an attorney in this town you cannot verify it.
- Q. Well, you asked me the question and wanted an answer and I want to give it to you straight.
- A. Yes, I did. I have been badgered more here to-day than ever Captain Lie was on the stand.
- Q. You should not be so offended when you sought my answer.
- A. Oh, I am not offended, this will soften up in a few minutes.

Redirect Examination.

Mr. DENMAN.—Q. Captain Bulger, is it possible that Mr. McClanahan's expression of irritation on your part comes from the fact that you recognized there was some discrepancy in the Captain's statement between the morning and the afternoon and possibly you might have been a little more severe on him?

A. I was not severe on him. I get the facts wherever I can, I don't care how I get them. Some people object to direct questioning—

Q. (Intg.) You did know there was a discrepancy at the time [829—706] you examined him, did you?

A. I did, yes, sir. That is the reason I wanted to put the engineer on. I could not accuse the captain. The captain might have come in there in his excitement and said 10 minutes when he meant 5, or said 20 minutes when he meant 10. I told him I wanted to deal fairly with him and not take advantage of him, and I told him to get an attorney. I asked him if he wanted to bring charges against the captain and he said no.

Q. Mr. McClanahan not only refused to put the engineer on but said that that was all the evidence he would give, did he not? Let me read you the words.

A. I don't know that I could recollect them.

Q. Do you recollect the following:

"Inspector BULGER.—I would like to have your chief engineer.

Mr. McCLANAHAN.—I think we have given

our statement sufficiently.

Inspector BULGER.—Have you any objection to putting anybody else on the stand?

Mr. McCLANAHAN.—Yes, simply because it is not necessary to put them on the stand in this hearing.

Inspector BULGER.—I would like to know if his engine was stopped, according to the log.

Mr. McCLANAHAN.—I prefer not to have any of the witnesses put on for the Norwegian ship.

Inspector BULGER.—We got part of it.

Mr. McCLANAHAN.—You got all of it. Well, I have said my say, I don't propose to put on any more witnesses. They can give you no more light than you have; I examined them and I know. [830—707]

Inspector BULGER.—According to that we are not competent but we have been handling these cases for over twenty years. We think the engineer is essential in this case.

Mr. McCLANAHAN.—You have the evidence."

And further on:

"Inspector BOLLES.—How long does it take the 'Selja' to stop, when the engines are stopped from full speed?

A. I could not say anything about it at all.

Inspector BULGER.—The engineer could tell us that."

Do you recollect that? A. Yes, sir.

- Q. Was that the occasion when you desired to put the engineer on so you could further cross-examine Lie after you had gotten that testimony?
- A. That was my intention, sir, which I have always done.
- Q. And that was the evidence you referred to when you said you wanted to put the engineer on?
 - A. Yes.
- Q. And those were the statements that were made at that time?

 A. To the best of my recollection.

Recross-examination.

Mr. McCLANAHAN.—Q. Captain, don't you remember that all of the possible witnesses for the "Beaver" were not put on?

- A. Well, I didn't know that.
- Q. Didn't you know that? A. No.
- Q. Let me read this to you:

"Inspector BOLLES.—(To Captain Kidston.) Was your quartermaster on the bridge, Captain? A. Yes, sir.

Q. Captain Kidston, could be give us any further information different from what these people have said?

A. I don't think he can give you any information any different from what you have heard, Captain." [831—708]

- A. Well, that was up to Captain Bolles, I have nothing to do with that.
- Q. So there came a time when you did not believe it necessary to put on other witnesses from the "Beaver." A. I say that is up to Captain Bolles.

- Q. Why, do you make a distinction between Captain Bolles and yourself—is he your superior?
 - A. No, sir, I don't think so.
 - Q. You are of equal rank? A. Yes, sir.
 - Q. Your position is a political one, is it not?
 - A. No, sir, I beg your pardon.
 - Q. Who are you appointed by?
- A. Appointed by the Civil Service Commissioner—appointed by the Secretary of Commerce and Labor.
 - Q. You are appointed—
 - A. (Intg.) Civil service examination.
- Q. You are appointed after a civil service examination?

 A. After a civil service examination.
 - Q. But you are appointed, are you not?
 - A. There are no politics in it.

(The further hearing of this matter was thereupon continued until Monday, July 24, 1911, at 11 A. M.) [832—709]

Monday, July 24th, 1911.

[Testimony of E. B. McClanahan, for Claimant.]

E. B. McCLANAHAN, called for the claimant "Beaver."

Mr. DENMAN.—I will waive the oath being administered to Mr. McClanahan.

- Q. Mr. McClanahan, you have just heard read to you the following:
 - "Q. You know, did you not, that Captain Lie was there out of courtesy to your office in giving his testimony?
 - A. Yes, he was there out of courtesy. I

(Testimony of E. B. McClanahan.)

found that out afterwards. I thought we had a right to subpoena him.

- Q. And you know that his third officer was put on the stand out of courtesy?
- A. Just let me ask you a question: Was there any discourtesy shown to Captain Lie when he was on the stand in my office?
- Q. You want me to answer that perfectly frankly, Captain? A. Yes, I do.
- Q. I believe, Captain Bulger, that you were very discourteous to Captain Lie.
 - A. In what way?
- Q. Just wait a moment: you have asked me a question and I am going to answer it. And that was the reason why I refused to allow any more of the 'Selia's' officers to be examined.
- A. I am surprised to hear you make that statement. With a man of your reputation as an attorney in this town you cannot verify it.
- Q. Well, you asked me the question and wanted an answer and I want to give it to you straight.
- A. Yes, I did. I have been badgered more here to-day than ever Captain Lie was on the stand.
- Q. You should not be so offended when you sought my answer. [833-710]
- A. Oh, I am not offended, this will soften up in a few minutes."

You recollect that, don't you, last Saturday?

San Francisco & Portland Steamship Co. 983 (Testimony of E. B. McClanahan.)

A. Certainly. I recollected it without having it read to me.

Q. And your statement here now is what you believe to be the true reason why you failed to put the engineer on the stand?

A. Absolutely-what is that, failed to put the

engineer on?

Q. That was the only witness they asked you to

put on?

A. All my witnesses for the "Selja," all the officers, were present at that hearing, out in the hall, and it was my intention to put them on if they desired them on.

Q. That was the only witness they asked you to put on, was it not, in addition to the evidence they already had?

A. I think they asked to have the Chief Engineer

called.

Q. That was the only witness they asked to put on, the Chief Engineer; just answer my question yes or no.

A. I think it was. The reason why they did not ask for the others was that I refused to allow any more to be examined.

Q. And that was the reason, was it? You are sure of that, are you? A. What was the reason?

Q. The reason you have just stated now. It is sometime ago, you know, Mr. McClanahan, and I want to give you a chance to make certain in your own mind that that was the reason. Did you have any other?

(Testimony of E. B. McClanahan.)

- A. Let me ask you, Mr. Denman, what is the materiality of this examination?
- Q. I want to show that you are mistaken when you say that is the reason.
- A. Well, suppose I was or am mistaken, what is the materiality?
- Q. It would be a matter for the Court to decide. Certainly you are not going to refuse to be cross-examined on a thing that you interjected into the record? [834—711]
- A. Well, I might, unless I can see that it is material. I certainly shall unless it is material.
- Q. I intend to show that the reason stated on Saturday was not the reason, that there is another reason, and a very significant reason with reference to this case, which I propose to bring out if you allow me to question you further. Of course, you can refuse if you want to.
- A. Well, that does not appear to be material, whatever my reason is.
- Q. Well, if it is not material I will agree to strike it from the record.
 - A. I don't know that it ought to go in the record.
 - Q. Was there any other reason, Mr. McClanahan?
 - A. I do not recall now that there was any other.
- Q. Of course, that was a pretty important point in the taking of the testimony, where the engineer was called for, was it not?
 - A. What was an important point?
- Q. The moment in the taking of the testimony in which the engineer was called was an important

(Testimony of E. B. McClanahan.)
point with reference to developing the case so far
as the "Selja" was concerned, was it not?

- A. I did not consider it so, no.
- Q. Let me ask you, you remember Captain Lie testifying that it would take 5 minutes for the vessel to stop through the water after the engines were stopped, when going at a 3-knot speed, do you not?
 - A. Let me see it.
- Q. I say you recollect his testifying to that, do you not? A. I don't believe I do.
- Q. Let me call to your attention the fact that he did?
- A. That is what I want you to do. I don't think I recollect his testimony on that point. [835—712]
- Q. That was the whole thing that was in dispute at that time, was it not? The whole question in dispute was whether or not the "Selja" was stopped and had not given a 2-whistle signal; that was the point in dispute, was it not? That was the particular point on which they were interrogating Captain Lie.
- A. There was a time when they were interrogating him on his failure to blow two signals; I don't know that that was in dispute at all.
 - Q. It was not a matter of dispute?
- A. Why no. Captain Lie never said that he was at a standstill.
- Q. Mr. Bulger said that he told him so in the morning, did he not?
 - A. Do you ask me what Bulger said?
 - Q. Mr. Bulger said that, did he not? A. Yes.
 - Q. Don't you recollect that you read into the rec-

(Testimony of E. B. McClanahan.) ord the other day Captain Lie's statement?

- A. I may have.
- Q. You did not consider that, though, of any significance at all, the fact that he had kept his vessel going until just the time when the other vessel came into sight? That was not a matter of any significance in this examination, in your mind?
 - A. I don't know what you are driving at.
- Q. You will find out what I am driving at when I get through.
- A. Well, come right at the point. For the life of me I can't see the materiality of this.
- Q. I will come at it in my own way, Mr. McClanahan, if you will permit me. You are almost as trying a witness as some of the others I have had. Now, do you recollect it, or not?
 - A. I have told you that I did not.
 - Q. But you did put it in the record the other day?
- A. I may have put it in the record. Why don't you turn to it and show it to me, and I will admit it if it is in the transcript. [836—713]
 - Q. I will read it:
 - "Q. When you blow two whistles your ship is stopped through the water? A. Yes, sir, that means the ship is done in the water.
 - Q. To stop your ship through the water you would have to stop and back your engine? A. If I was done I would.
 - Q. How long would she run after your engines were stopped?
 - A. About 5 minutes. I was going to blow

three whistles. I gave three to back her. She was stopped at the moment I gave three whistles."

You recollect putting that in, don't you?

A. I certainly do.

Q. You recollect Captain Lie giving his testimony at that time?

A. Well, I think he gave it. I don't remember that he gave it.

Q. It was just after that that the significant conversation between Bolles and Bulger occurred?

A. I don't know what you refer to as significant.

Q. Well, you brought it out the other day, you put it in the record. A. Well, read it.

"Q. When you stop your engines dead still you are virtually stopped?

A. We are not allowed to blow as soon as we stop our engines. We may be going 15 or 20 knots.

Inspector BOLLES.—When she is stopped through the water, when there is no way on her."

You recollect that, don't you? A. Yes.

Q. You recollect putting that to the witness as significant, on Saturday morning?

A. I don't know how it was significant. I remember putting it to him.

Q. Well, why did you put it to him? [837—714]

A. I would like to have you show me the materiality of your question before I answer it.

Q. I am perfectly willing to let the record stand as it is. As I understand it, it was on account of

(Testimony of E. B. McClanahan.) this offense to Captain Lie by Mr. Bulger that you would not put on any more witnesses.

- A. I did not call it an offense.
- Q. Well, whatever it was?
- A. It was his conduct toward Captain Lie, yes, as I remember it.
 - Q. What did that conduct consist of?
- A. Now, I will have to ask you again to show me the materiality of that question.
- Q. Because you interjected it into the record yesterday. You said that it was on account of that conduct that you would not put on any further witnesses. I want to interrogate you in regard to that. Surely you would not put anything into the record you thought was irrelevant.
- A. You cannot do it, Mr. Denman, until you show me the materiality of it. How does it have any bearing on this case?
- Q. I want to show that you were mistaken on Saturday.

 A. Mistaken as to his conduct?
- Q. As to your conduct, mistaken as to your statement of the reason why you did not put the engineer on at that time.
- A. I am willing for you to show that I was mistaken. That was the only reason I remember of now. I don't know of any other reason for not putting any more witnesses on.
- Q. You have said that before. Now, Mr. McClanahan, what was the offensiveness of Mr. Bulger toward Captain Lie that you refer to?
 - A. If you show me the materiality of that ques-

(Testimony of E. B. McClanahan.) tion I will answer it.

- Q. I want to prove that there was none. You answer the [838—715] question and then I will show that there was no offense.
- A. Well, suppose you do show that there was none, then what is the materiality?
- Q. Then I will show the real reason why you did not put the engineer on. Now, as to the question, what did this offensive conduct consist of?
- A. Well, if you are anxious to know, Mr. Denman, you were there, of course, and saw it just as well as I did.
 - Q. I saw it different, though.
 - A. Yes, and that is quite likely.
 - Q. Just answer my question; don't interrogate me.
- A. It was not so much a discourteous action on the part of Captain Bulger as would be shown from reading the examination of Captain Lie as it was his tone of voice, the inflection he gave to his words, the way he looked—all of it was extremely discourteous to a man who was there out of courtesy, not there through any compulsion. Now, I may have been oversensitive in looking at that matter in that way. Captain Lie himself felt it and spoke to me about it. He felt as though he were on trial.
- Q. You are not answering my question, Mr. Mc-Clanahan; don't inject anything into your answer that is not an answer to the question. I am asking you what you saw, I am not asking you what the Captain might think. You are a lawyer and you ought to know how to answer the question; you are not a

layman witness, you know what is an answer to the question.

- A. Well, I am very much surprised, Mr. Denman. to have you ask me this question. I am surprised at all these questions. They have no materiality at all to the case.
- Q. Well, you may think they are not material, but I want to [839-716] give you a chance. You could have answered the questions at once, Mr. Mc-Clanahan if you desired to. You don't think I can trap you in any way, do you, Mr. McClanahan?
- A. I don't know whether you can or not; I am going to try and avoid it, if possible.
- Q. And that was the reason why you did not put on any more witnesses, was it?
 - A. Do you want me to answer that again?
 - Q. Yes.
 - A. Yes, that was the reason as I remember it now.
- Q. Why did you put on the third officer after that? A. Why did I put him on?
 - Q. Yes.
- A. I don't know. I think he was called for, wasn't he? I don't know.
- Q. But you say that the reason why you did not allow any further witnesses to go on was because Captain Lie had been insulted. Immediately afterwards you put on the third officer.
 - A. I did not put him on.
 - Q. Well, he was called. A. Yes, he was called.
- Q. He was called the same as any other witness was called?
 - A. Now, I can explain that very easily.

Q. Well, do it.

A. And I can do it without your suggesting that I do it. As I remember it now, this conduct on the part of Captain Bulger, the offensiveness of it kept growing on me, and while it did not appear to me at the end of Captain Lie's examination, it did not appear to me then to be appropriate, perhaps, not to put on any more, but as I thought of it it grew on me, and I finally came to the conclusion that I should not put on any more. Then another reason that occurs to me now, it looked to me as though there was an effort being made—and I may be mistaken in this—to get all of the [840—717] evidence of the "Selja's" officers before there was any evidence put on by the "Beaver."

Q. Had not the "Beaver's" captain testified at that time?

A. Exactly, but nobody else from the "Beaver" as I remember it—nobody else from the "Beaver." Captain Lie was then called, and then the third officer, as I remember it, was called.

- Q. Only two, as I recollect. A. Only two.
- Q. That was the reason, was it?
- A. That was the reason for what?
- Q. For not putting on any further witnesses?
- A. Oh, I think I have answered the question.
- Q. There was not anything offensive in Mr. Bulger's demeanor toward the third officer, was there?
 - A. I don't think so; I don't remember.
- Q. So there was not any evidence of a continuing discourtesy to the witnesses?

- A. No, I don't remember that there was.
- Q. Now, the reason is coming around to being fear in your mind that there would be an advantage taken of your witnesses by having all yours come on first before the others; is that the reason?
 - A. Is what the reason?
- Q. First you gave your reason as being an insult to Captain Lie. A. I did not call it an insult.
- Q. The manner that was shown toward Captain Lie? A. Yes, sir.
- Q. Now, you give it as your reason, that although the second witness was not insulted or mistreated in any way, and no offense was shown to him, you concluded, after hearing the second witness treated properly, that you would put no more on because all the witnesses of the "Selja" were going on first and none of those of the "Beaver"—is that correct?
- A. That may have had something to do with it. [841—718]
- Q. Now, is there anything else that could have had anything to do with it?

 A. I don't know.
 - Q. Now, just think?
- A. I have told you as I remembered it that my reason for not allowing any of the officers other than Captain Lie to be examined was because of Mr. Bulger's discourteous conduct in his examination of Captain Lie. Now, if there were any other reasons why I did not, and you call my attention to them. I will be glad to admit them.
- Q. Well, I have gotten one of them, that you were afraid that some advantage would be taken of you

because your witnesses were coming on too fast for you. Why should you be afraid, Mr. McClanahan, that any disadvantage would accrue to you by having your witnesses examined first?

A. I decline to answer the question on the ground that it is not material. If you can show it to be material I will gladly answer it.

Q. Do you recollect the last question put to Mr. Bjorn, the third officer? I will read it to you:

"Inspector BULGER.—How long was it from the time your ship stopped her engine until the collision occurred?

A. It was stopped about 3:10; collision occurred 3:15 or 3:16."

Do you recollect that?

A. I recollect having read it in the testimony. I don't have any independent recollection of having heard it at the hearing.

Q. You do recollect now that it did occur, do you not? A. No, I say I do not.

Q. You do not?

A. I recollect having read it in the transcript. I have no independent recollection of the man testifying to that. [842—719]

"Inspector BULGER.—We would like to have your chief engineer."

You recollect that the transcript shows that that follows immediately after this question, do you not?

A. Yes.

Q. And then you recollect, do you, that you said:

"I think we have given our statement sufficiently."

Do you recollect that?

- A. Yes, I recollect having read it in the transcript. I never put any significance to it, though, so I have not charged my memory with it.
- Q. Do you recollect the testimony of the engineer given one week later in your office on that subject?
 - A. No, I do not.
 - Q. Well, I will recall it to you:
 - "Q. And at 3:10 the engine had stopped? A. Yes.
 - Q. How long would it take her to stop her speed going at the rate she was going at 3:10? About a minute, isn't it? A. Oh, it would take perhaps two minutes.
 - Q. Not more than two minutes? A. Do you mean to stop herself?
 - Q. Yes. A. Oh, a minute to 2 or 3 minutes.
 - Q. About a minute, isn't it really, Chief? A. No. Well, it would take her two minutes, I should think.
 - Q. About two minutes? A. Yes.
 - Q. That is at the outside. A. 2 or 3 minutes.
 - Q. Not more than 3? A. No.
 - Q. You are sure of that? A. Yes."

Did that have anything to do with your failing to put the engineer on at that moment?

- A. At what moment?
- Q. When he was asked for, just after the inquiry as to how long it would take from the time the ship

stopped her engines until the collision occurred?

- A. Absolutely nothing whatsoever. [843—720]
- Q. You can see the significance of it, can you not?
- A. No, I do not.
- Q. You do not? A. No.
- Q. Suppose she stopped her engines at 3:10 and at 3:13 was dead in the water and had not blown two whistles. Does it not occur to you that there might have been a fault on the part of the captain?
- A. Yes, but in my opinion no such thing could have happened.
- Q. But the chief engineer did testify that that was the case, did he not?
- A. On your cross-examination he did, but I don't think his evidence is worth a pinch of snuff. I don't think the engineer of any ship knows anything about how long it will take a ship to stop after her engines have once stopped.
- Q. And he did testify to that within a week after the hearing, didn't he?
- A. On your cross-examination he did, and you put words into his mouth, yes. A poor foreigner, who didn't have very good command of English, and he was led up to the water and made to drink.
- Q. Did you know at that time that the chief engineer had that opinion? A. No, I did not.
- Q. Do you recollect testifying—you are sure of that, are you? A. No, I am not sure of it.
 - Q. Then why did you say, no, I did not?
 - A. Because that is my present recollection.
 - Q. He may have said it to you at that time?

- A. He may have said what?
- Q. That the ship might have been stopped in three minutes. A. He may have said it to me when?
 - Q. Before the time you refused to put him on.
- A. Well, I don't know that I had seen the chief and examined [844—721] him on the facts of the case. I don't think I had. I may have. This was think the day of that hearing.

on the 25th. I was not employed in the case until I

- Q. Oh, no, you were employed the day before Thanksgiving, were you not? Didn't you work Thanksgiving Day on the case?
 - A. I don't know. What day was Thanksgiving?
- Q. Thursday, the 24th. You were employed on the 23d, were you not?
- A. No, I don't think so. I am pretty sure we were not. I am pretty sure we were not employed on the 23d.
- Q. You had not examined all the trial before the inspectors?
- A. I don't know, Mr. Denman, whether I had, or not. I am not sure about that. I know that we were called to the office of Henry Lund & Company, I think on the morning of the 23d, and there were some telegraphic communications between Lund & Company and New York, with reference to our employment, and I don't think it was settled until the next day. Now it comes back to me, I think it was the 24th that we were finally employed. I know they tried to get Mr. Page, but Page had already been employed by the Pacific Mail. I think it was on the

San Francisco & Portland Steamship Co. 997 (Testimony of E. B. McClanahan.)

afternoon of the 24th that we were finally employed.

Q. Had you examined any witnesses before the afternoon of the 24th?

A. Absolutely not, before we were employed; we had nothing to do with the case.

Q. Before the afternoon of the 24th?

A. If that was the time we were employed, and I think it was. I am sure we were not employed on the 23d.

- Q. Let me ask you: do you recollect the following after the question as to how long it was between the time of the stopping of the engines and the collision do you recollect Mr. Bulger saying he would like to have your chief engineer and you saying, [845—722] "I think we have given our statement sufficiently"—do you remember that? A. Yes.
 - Q. That is correct, is it? A. Yes.
- Q. And then the question was, "Have you any objection to putting anybody else on the stand," and you said "yes, because it is not necessary to put them on the stand in this hearing." And then Inspector Bulger said: "I would like to know if his engine was stopped, according to the log." That shows, of course, what he was after. And then you said: "I prefer not to have any of the witnesses put on for the Norwegian ship." And then Inspector Bulger said: "We have got part of it." To which you replied: "You got all of it." "Well, I have said my say, I don't propose to put on any more witnesses. They can give you no more light than you have. I have examined them and I know."

At that time had you examined the chief engineer and did you know what he would testify to as regards the time it would take to stop the ship?

- A. I don't think so.
- Q. Well, they were trying to put the chief on at that time, were they not?
 - A. The record speaks for itself.
- Q. Yes, that is correct. The chief is the one they were trying to put on at that time, were they not?
- A. I say the record speaks for itself. I don't know anything more than what the record shows.
- Q. And the chief engineer did give the testimony I have pointed out to you, about a week afterwards?
- A. Yes. I don't know whether it was a week afterwards, or not, but it was sometime afterwards.
- Q. Did you inform the United States Inspectors of the fact that you were mistaken when you told them as you did here [846-723] that you examined them and knew what they would testify. Did you tell them you were mistaken with regard to the engineer's testimony, and what it would have been ? A. Why no.
- Q. I suppose you felt that Mr. Bulger's rudeness absolved you from that?
- A. I decline to answer that question; it is impertinent, irrelevant, immaterial and incompetent.
 - Q. I don't mean to be impertinent.
- A. Well, you are certainly impertinent when you ask that question.
- Q. Let me ask you-you would not consider this an impertinent question: were you at that time ap-

(Testimony of E. B. McClanahan.)
pointed attorney for the Norwegian Consulate?

- A. In what matter?
- Q. Were you acting as the attorney for the Norwegian Consulate? A. In what matter?
 - Q. In any matter.
- A. I think we were advising Mr. Bjornstead, who is the Secretary for Mr. Lund.
- Q. You were the attorney for the Consulate at that time, were you not?
- A. I do not care to say more than I have, that we were advising with him.
 - Q. Was that an appointive position? A. What?
 - Q. Your position that you occupied as adviser?
 - A. Was it an appointive position?
 - Q. Yes.
 - A. I think it was an accepted position.
 - Q. Was there anything political in it?
 - A. Not that I know of.
- Q. It would not color your testimony in any way, would it, the fact that you held that position?
- A. Well, I decline to submit any more, Mr. Denman, to this line of examination; I don't know what you are driving at.
- Q. Let me ask you a fair question: what did you mean when [847—724] you asked Mr. Bulger on Saturday whether or not he occupied an appointive position in the Federal Government?
- A. If you show me the materiality of that question you put to me I will answer it; otherwise I will not.
- Q. You went into it yourself, and, of course, it must be material.

A. You did not object to it. If you show me the materiality, I will answer it; otherwise, I will not. I am getting very tired of this whole examination. There is absolutely nothing in it of any materiality to the issues of this case.

Q. So was Mr. Bulger tired of it.

A. Are you now representing Mr. Bulger in this cross-examination of me?

Q. No.

A. Who are you representing? Are you trying to clear Mr. Bulger?

Q. Oh, no.

A. What is the object of this examination?

Q. I am trying to find out why you asked him that question, for the purpose of clearing up the record in that regard. You tendered the issue. You asked him concerning his federal appointment. You said he had a federal appointment, of an appointive nature, and you suggested that it would materially affect his testimony. I want to ask you whether or not, in your opinion, such a position held by you would affect your's?

A. Then you have withdrawn your other question, have you not? In other words, you have failed to show the materiality of your other question which I declined to answer unless you did make it appear material to me. You have withdrawn that, have you?

Q. You understand my question, do you not?

A. You answer my question, have you withdrawn the other question? [848—725]

Q. Which question are you referring to now?

A. The record will show, the one I declined to answer. This is the most farcical examination I ever heard of.

Q. I think so, too.

A. If you will tell me how the material issues of this case are being enlightened one way or the other by this examination, I shall be very much obliged to you.

Q. Now, let me ask you this: Do you recollect, about a week after the collision, my requesting you for a copy of the statement made by the officers of the "Selja" to the Norwegian Consul?

A. I decline to answer that question.

Q. The purpose of this is to show that counsel on the other side—what is the ground upon which you decline?

A. It is absolutely immaterial; it has no bearing upon the issues in that case.

Q. Let me put another question to you: Do you recollect—

A. (Intg.) I don't think you can put a material question to me, Mr. Denman.

Q. Oh, certainly; none that you will treat as material if you do not wish to answer them.

A. It is quite apparent that you do not know how to put a material question to me.

Q. Is it apparent to you that I cannot put one to you? Now, what is your best recollection in regard to my demand for a copy of that testimony?

A. I decline to answer upon the ground that it is not material.

- Q. Do you recollect that that testimony had in it a statement to the effect-by the Captain here-to the effect that when the collision occurred the ship struck at right angles? [849—726]
- A. I decline to answer upon the ground that it is immaterial
- Q. Have you the original transcript of the notes of the statement made by Captain Lie and the other officers before the Norwegian Consul concerning the facts attending the sinking of the "Selia"?
- A. Have I the original notes of their statements to me?
- Q. No, of the transcript of the testimony before Mr. Brown, acting for the Norwegian Consul?
- A. I don't quite follow that, Mr. Denman—have I the notes, the stenographic notes of the evidence given before Mr. Brown?
 - Q. Yes. A. Have I them?
 - Q. Yes.
- A. Not unless somebody has put them in my office without my knowing it.
- Q. Do you recollect going to Mr. Brown, or the stenographer himself, and asking for those notes?
- A. I don't think I ever went to Mr. Brown with any such request.
 - Q. Did you go to anybody else with that request?
 - A. I decline to answer.
 - Q. Why do you decline to answer?
 - A. Because I don't think it is material in this case.
- Q. If it is not material, it can't affect your case, can it?

- A. We are wasting a lot of time here, and I am submitting to your examination on a matter that I consider absolutely immaterial to this case.
 - Q. You decline to answer, do you? A. Yes.
- Q. Let me ask you: Do you know you insinuated on Saturday that the fact that Mr. Bulger held a federal office in some way reflected on his memory of his testimony. Of course, you would not insinuate into the record a thing which you would not [850—727] explain; will you explain what you meant by that?
- A. I decline on the ground that it is immaterial and I also say that you are making wide use of my cross-examination when you say it insinuates one thing or another; the record speaks for itself.
- Q. Well, you don't mean to say that you deny your manner was not insinuating at that time?
- A. Why, certainly, I do. I don't know that my manner with regard to that question was any different from what it was in regard to any other question.
- Q. So you will let the record stand with whatever insinuation may be inferred from the question and without explaining what you meant?
 - A. Certainly.
- Q. As I recollect it, you stated on Saturday that you were certain that the log of the steamer "Selja" was read at the taking of the testimony before the United States Inspectors?
- A. That is my recollection, yes; read by either Mr. Bulger or Mr. Bolles. The record shows Mr. Bulger. I should have said that Bulger read it, but he said he

(Testimony of E. B. McClanahan.) did not. It was read by one of the two.

Q. Do you recollect this statement in it:

"At 3:05 P. M. ordered slow speed, as we heard the whistle nearing, and at 3:10 stopped the engines, the vessel then being nearly at a standstill."

A. I remember that that was read from the translation of the log, yes.

- Q. Do you recollect that Inspector Bulger put this question:
 - "Q. When you stop your engines dead still you are virtually stopped?"

A. No, I do not. I remember having read that in the transcript, but I have not any independent recollection of that question. [851—728]

Q. The one is practically a following up of the suggestion of the other, is it not?

A. I don't know.

Q. That is to say, Captain Lie said the vessel was almost at a standstill when the engines were stopped, and Mr. Bulger said, "When you stop your engines dead still you are virtually stopped?" Those two statements are practically identical, are they not?

A. I don't know. I suppose you can argue that they are.

Mr. DENMAN.—That is all.

(An adjournment was thereupon taken until tomorrow, Tuesday, July 25th, 1911, at 10 A. M.) [852—729]

Tuesday, July 25th, 1911.

Mr. McCLANAHAN.—I think, in my examina-

tion yesterday, that there was a question propounded as to whether I had taken a statement of the chief engineer prior to the hearing before the inspectors. Mr. Derby called my attention to a letter which he wrote to our principals, I think on the 25th of November, and in that letter his statement appears that we took the statement of the officers of the "Selja" yesterday. That would be the 24th. I just want that to appear in the record.

Mr. DENMAN.—It also appeared, Mr. McClanahan, that you testified, or that you stated to the inspectors on that day, that you had examined them and knew what they would say.

Mr. McCLANAHAN.—Yes, that appears in my evidence, and that is the reason I am making this statement now. It may be that there was uncertainty as to my statement with reference to having examined the chief engineer before the hearing. If there was, I want to have the record show that this letter was written on the 25th, I think, in which it is stated that the statement of the officers of the "Selja" was taken in my office. That, is all.

[Testimony of Lionel Heynemann, for Claimant (Recalled—Cross-examination).]

LIONEL HEYNEMANN, recalled for further cross-examination:

Mr. DENMAN.—Q. Mr. Heynemann, you recollect testifying that it would take a certain length of time for the "Selja" to stop in the water, if her engines stopped, when she was going at a certain speed;

(Testimony of Lionel Heynemann.) you recollect that? A. Yes.

- Q. Now, will you just take a sheet of paper and compute how long it would take the "Beaver" to stop, presuming you have the [853—730] same data here and the same circumstances?
 - A. I could not do it.
 - Q. You were able to do it for the "Selja."
- A. No, I did not do it on the spur of the moment; it was quite a long process.
 - Q. Just tell us what the process is.
- A. Well, I doubt whether it would be of any use to you if I were to explain the process.
- Q. Well, just explain it, so that if there were an expert here he could use it, or if the Court happened to be expert enough to understand it, the Court could use it.
- A. I will say that I have a diagram here that might possibly throw some light on the subject. I have a diagram here before me which represents the conditions of distance run for the Norwegian steamer "Selja" when running at 40 revolutions, and after 5 minutes reducing her speed from 40 to 20 revolutions. This diagram represents the distances run under those conditions.
 - Q. Just let me look over it, please.
 - A. Yes (handing).
- Q. Suppose a vessel is going at the rate of 6 knots through the water, and her propeller is stopped, the propeller, of course, extends into the water on both sides of the stern of the vessel and close to it, does it not? A. Yes.

San Francisco & Portland Steamship Co. 1007 (Testimony of Lionel Heynemann.)

Q. Will it check her as much if it is going at a 3-knot pace as if it were not going at all?

A. I would say it would not check her as much under certain conditions.

Q. I am presuming still water and that the vessel is going ahead. [854—731]

A. In former testimony I think I have explained that under certain conditions, with a very easy running engine, the advance of the vessel would revolve the propeller; that is to say, a propeller would be moving by the mere advance of the vessel in the water; that would then cause the engine to revolve and that might under certain conditions cause less resistance than the drag owing to the vessel going one speed and the propeller going another.

Q. Would those easy-running conditions be likely to exist on the ordinary merchant ship?

A. No, I hardly think so.

- Q. Have you, since I last talked with you, computed the amount that would be added to the distance run by the vessel by having her propeller turning at 3 knots, between 3:05 and 3:10? I am speaking now of the "Selja." A. I have.
 - Q. About how much is that, in round figures?

A. The additional distance run would be approximately 500 feet.

Q. I am now asking you in regard to the "Beaver." Presuming she is running at a 3-knot speed, and her engines are stopped, how long would it be before the "Beaver" would be stopped in the water?

A. I could not tell you.

Q. I know you have said that before. Will you kindly check off or put into the record the steps that you would pursue in determining how long it would take the "Beaver" to stop under those conditions?

A. I do not know that I could tell you all those steps within a reasonable time.

Q. Well, there is a way of accomplishing that result, I presume. You could go through a mental process. You do go through a mental process, don't you? I am not talking of figuring it. You apply a certain formula, don't you?

A. I will explain it in this way, that as a general proposition [855-732] and the idea that these diagrams are founded on, when you have two different rates of speed and you draw these two different rates of speed and separate them by a distance equivalent to the time, you create a certain figure: the area of this figure is the distance run. Now, if you want me to bring that down to very plain figures. I can state it in this way, that supposing a wagon is rolling down the hill and it starts in with a speed say of 2 feet, and has accumulated a speed after a little while of 4 feet; and supposing that that acceleration has been a gradual one, then her average speed would be 3 feet. Now, supposing that it takes her 5 seconds to accomplish this travel or this acceleration-to reach this acceleration—then the distance travelled would be 5 times 3, which is 15 feet. Now, if you take a figure and take a base line of 5 and take an ordinate on the one side of 2 feet and on the other side of 4 feet and you connect the two lines, the two

(Testimony of Lionel Heynemann.) points, at the end of the ordinates, you produce a figure that is called a trapezium. Now, the area of that trapezium is equal to the distance run.

Q. How accurate do you regard your computations when you begin to get down to a very slow speed at the end of the computation? Practically how accurate are they when you get down to 2 knots and below? I know the theoretical result keeps spinning out to infinity, but I mean as a practical man, how accurate do you regard your illustrations when you get down to 2 knots?

A. It will not spin out to infinity, but it does spin out to very narrow limits.

Q. Absurd limits for practical purposes, is it not?

A. I can answer your question by stating, for instance, that in this diagram of the "Selja," which is before the Court, at [856—733] 3 hours and 20 minutes the distance run is 6035 feet—under certain conditions; at 3 hours, 21 minutes and 40 seconds, the distance run is 6043 feet. In other words, in one minute and 40 seconds that vessel travelled 7 feet. It may have travelled 8 feet, it may have travelled 10 feet.

- Q. In a very rough sea, it might not travel at all?
- A. It might not travel at all. These figures do not take in the condition of currents and winds and waves.
- Q. I know, they are just theortical. Now, let me put the question to you again, because, frankly, I have consulted with your confreres and I have got an impression. Is it not true that these computa-

(Testimony of Lionel Heynemann.) tions on the speed of vessels, when you get below 3 knots, are regarded as of dubious value?

A. No, I would not say that.

Q. When you get below 2 knots are they not regarded as of dubious value?

A. No, I would not say that.

Q. Are not the other factors that enter in—sea and wind and other stresses in the shape of the molding of the vessel, and that sort of thing,—are not those so variant that when you get below 3 knots you can no longer place any practical reliance on these calculations?

A. In answer to that I will say that there are no calculations that can be made by the human mind under any conditions that are of absolute value.

Q. I am not talking of absolute value, I am talking of practical value?

A. All our theories depend on certain conditions which may not be absolutely correct. But if we want to divest ourselves from the possibility of giving results owing to the fact of different conditions we will not be able to arrive at any results at all. [857—734]

Q. I quite understand that, but there is a vast field in which mathematics can be used and figured down to very fine degrees, in various mechanical and engineering matters, and yet it is universally recognized that when it comes to figuring for practical purposes, that those mathematics encounter such variance in actual conditions that they are practically of no value? You have to abandon mathematics in a very wide field of calculation, do

you not, and simply take your experiments?

A. No, I would not like to make that statement, Mr. Denman. The reason I do not want to make that statement is that I have too much respect for the science of mathematics.

Q. I am not making fun of the science.

A. But given certain conditions, and excluding other conditions, mathematics and the physical sciences are the only means by which we have for arriving at any results at all. You may say, for instance, that a train under certain conditions will go 30 miles an hour. You can figure out those conditions. But there may be a whole lot of other conditions that might prevent that train from making 30 miles an hour, but if we cannot at first make these figures and base our estimates on them, we are altogether at sea.

Q. Oh, I quite understand that. But when you get down—

A. (Intg.) It is very true, I say, that toward the last end it is possible that this slow drift of 8 feet in nearly two minutes—it might be 9 feet or it might be 10 feet, but I will say this, if you take the ordinary observer—and by the ordinary observer I will say the Chief Engineer of a boat, it would be perfectly impossible for that chief engineer by looking over the side, to determine whether that vessel was moving or not. The chief engineer may be under an entirely wrong impression unless he had gone through— [858—735]

Q. (Intg.) Had gone through these mathematics?

- A. Gone through calculations of this kind. And I will say that most engineers are unable to go through theories of this kind.
- Q. Now, do you suppose that the rules of whistles at sea, that their application is to be based on making calculations of that kind?

 A. No, sir.
- Q. It is a practical determination of when the vessel is dead in the water that must govern?
 - A. Yes.
- Q. Now, let me ask you: suppose your vessel is going at this very slow speed, what would be the effect on her of rough water as compared with smooth water?
- A. Well, the rough water might aid her or might retard her.
 - Q. How could it retard her?
 - A. It could retard her by a head wind.
- Q. I am talking about the water; let us cut out the element of air entirely. A. By currents.
- Q. Let us presume the water has no currents. As far as the retarding effect of her speed, the current has nothing to do with that, she moves in the current? A. The current might be against her.
- Q. Well, suppose the current were against her, she would move in the current; her rate with reference to the current would be constant, would it not? The fact that a ship is floating in a current, has nothing to do with its stopping, of course? A. Yes, it has.
- Q. Now, that is interesting. How would it? Presume now that the vessel is in the Gulf Stream, and we don't know where the bottom is, we don't

care anything about her stopping with reference to the bottom; but she is floating along; will she stop any sooner in the water or will it take any longer to stop in [859—736] the water under the conditions the "Selja" was in, or presumed to be in, at 3:05 or 3:10, because of the current?

A. I am under the impression that the laws of relative velocity would come in there and it would practically make no difference. I am under that impression. But a vessel travelling sets up a certain current and that water is torn along with the vessel advancing; now, there may be a difference in this, that if the vessel is travelling in otherwise quiet water the effect of that water that is torn along creating as it were its own current is not counterbalanced as it would be under other conditions. Do you understand what I mean?

Q. I understand it. You have made it perfectly clear.

A. But I am under the impression that practically it would make no difference if you put it in this way, that in the Gulf Stream a current of immense width—I don't believe that relatively the figures would be any different.

Q. Presuming, now, that if we are in currents at all we are in the Gulf Stream, in the center of it, would it or would it not make any difference in the time in which the vessel would stop if the water were very rough, if the sea was very rough, as compared with being smooth?

A. I would have to know whether you mean by

"stopping" a relative stopping or a positive stopping. What I mean by a relative stopping is a stopping with regard to the current that she is in, or a stopping with regard to some point on the land.

- Q. With regard to the water, stopping in the water?
- A. I believe it would depend on the size of the vessel.
 - Q. It depends upon the size of the vessel?
 - A. Yes.
- Q. If she were a large Atlantic liner, covering 2 or 3 waves, it would be one thing, would it not?
 - A. Yes. [860—737]
- Q. If she were a smaller vessel, it would be different? A. Yes.
- Q. How large are those Atlantic liners—how long?
- A. The big ones now are 700 feet long. The new ones are over 800 feet long. The "Olympic" is nearly 840 feet, I think it is.
- Q. The greater percentage of that draught is under water even where there is a fairly rough sea, is it not?
- A. The entire draught is under water. By "draught" you mean the part of the vessel that is under water?
- Q. Then I am using the term improperly. Of course, the deeper the vessel the less she is exposed to variations due to wave action?
 - A. I should say that that is correct.
 - Q. That is, the greater portion of her would be

San Francisco & Portland Steamship Co. 1015 (Testimony of Lionel Heynemann.)

in steady or comparatively steady water under the waves—that is correct, is it not? A. Yes.

Q. And as you go down in the size of vessels the relative effect of the wave action of the water rapidly increases, does it not? For instance, take a vessel that covered two waves, two waves will produce a certain effect on her; cut it down to one wave and it would be very much more than twice as much, would it not, in all likelihood?

A. That is putting it in a way that is difficult to answer.

Q. That is about the way a seaman would think of it, is it not?

A. There are certain phenomena that would take place on a smaller vessel that would not take place on a big vessel; but to say that one would have double the effect of another by comparing a one-wave vessel as compared to a 2-wave vessel, I am not prepared to say that, whether the effect would be double or half. It puts it in a way that makes it impossible for me to answer. [861—738]

Q. The tendency would be to have the effect increased very largely?

A. I don't know what particular effect you are speaking of.

Q. Well, the effect upon the speed of the vessel?

A. I don't believe that when a vessel reaches a certain size the waves have much effect.

Q. Well, presuming that then. Presuming that the vessel has reached the size where she crosses so many waves and is so deep in the water, she is (Testimony of Lionel Heynemann.) beyond wave action?

- A. No vessel is beneath wave action.
- Q. How much of the vessel is beneath wave action—I mean to say that the depth of the vessel is so great, the draught in smooth water is so great, that as the movement of the waves goes on it does not get very far down on the side of the vessel; the amount of increased surface exposed to friction by the wave motion is lessened necessarily as the depth of the vessel increases—that is a fact, is it not—a proportionate amount?

A. It is also difficult for me to answer a question put in that way because no vessel draws so much water as to be below the wave disturbance. They are all more or less under the influence of the waves. I suppose you gentlemen will understand that there is no forward or backward motion to a wave. It is a sort of vibration. It is a vibration. The large vessels are not affected to any great extent by the action of the waves.

- Q. Now, let me ask you this: I am quite well aware that that is your theory. While there may be no forward or backward motion of the water, is there any power transmitted through the water?
 - A. There certainly is.
- Q. And does not that power beat upon the shore and upon the cliffs when it comes to the end of its ccurse? [862—739]

A. The wave that beats upon the shore and upon the cliffs is an entirely different wave from the sea wave. Q. I mean the power that creates that.

A. But that is a different power from the one you are speaking of.

- Q. The power that creates the wave that beats upon the shore is the wave out at sea, is it not, transmitted through the water?
 - A. No, sir, it is not.
- Q. Have you ever seen waves rolling in from sea, where there was deep water under a heavy cliff?
 - A. Yes.
- Q. And how as they struck the cliff the cliff would resound? A. Yes.
 - Q. And how it would jar? A. Yes.
 - Q. And the water would splash high in the air?
 - A. Yes.
- Q. Where is that power created? I am talking about the power; I am not talking about the fulcrum or leverage on which the power works?

A. One power is simply represented by the weight of the water.

Q. What moves the weight? Remember, I am talking about the power.

A. One power I say is represented by the weight of the water; another power at sea is represented by the buoyancy of the water. Those are two entirely different things.

- Q. As I take it, those are not powers, those are things moving?

 A. One is the power.
- Q. What is the power? What is the thing that starts the wave moving?

 A. The wind.
 - Q. Suppose there is no wind at all blowing at

the time the wave hits the cliff, what has brought that power to the wave and sent the water in the air?

- A. The vibration of the water. [863—740] I can illustrate that: suppose you have a string in your hand and I hold the other end in my hand, and we stretch that string taut and I tap that string on my end you will find a translation of waves going through that string. There has been no transmission of matter, there is only a transmission of vibration you may call it.
- Q. You can call it what you please, but it is a transmission of the thing produced by your hand at the other end, is it not? A. Yes.
 - Q. And that is power? A. Yes.
 - Q. And I will get a jar on this end? A. Yes.
- Q. Suppose the wind is blowing a thousand miles out at sea, supposing it produced a tremendous sea, supposing the wind never reaches the cliff but the wave drives against the cliff, jars it, possibly shatters it, and sends spray high in the air, the power that created that was the wind out at sea, wasn't it?
 - A. Yes.
- Q. And that power has been transmitted through the water? A. Yes.
 - Q. Through the wave motion? A. Yes.
- Q. Will not that power when it strikes the ship broadside to it be translated to the ship as it would be to the cliff? A. Yes, sir.
- Q. And wouldn't it be on the bow of the vessel in the same way as it would on the side, to a certain

extent? A. When I answer in the affirmative I—

Q. (Intg.) Well, answer first and explain afterwards, if you will? A. What is the last question?

Q. Would it not have a deterrent effect on the bow of the ship [864—741] just as it had on the side—relatively, not as great perhaps but wouldn't it have a deterrent effect?

A. It will have a deterrent effect in a certain way. If a wave that does not break climbs up the side of a vessel there is no such action as you speak of. You will find no spray flying up in the air. You will find that the vessel simply is in a body that is under a certain vibration. If the wave breaks, as it does against a cliff, and as it very often does at sea, then it does have that effect on the side of the vessel that you speak of. But a very big wave, say a 20-foot wave, can come along head-on and the vessel plunge into it and cause a very little deterrent effect except that increase owing to an increased frictional resistance, owing to the fact that the water climbs higher up on the hull. But, on the other hand, that is equalized by being lower down further aft. So the deterrent effect-

Q. (Intg.) Your idea is that it will move a vessel, or the power will be translated into the side of a vessel if it strikes the side but it won't be translated at all into a vessel if it strikes the bow; is that it; is that your idea?

A. No, that is not my idea. I mentioned that if the wave breaks—

Q. (Intg.) Have you ever seen—

Mr. McCLANAHAN.—Let the witness answer the question without interruption, Mr. Denman.

A. (Continuing.) If the wave breaks against the side of the vessel, then there is that effect that you speak of, and if the wave does not break against the side of the vessel there is, I should say, very little deterrent effect. [865—742]

Mr. DENMAN.—Q. Have you ever seen a vessel pounding through a heavy swell? A. Yes.

- Q. Waves do break on the bow, don't they?
- A. Oh, yes, they do.
- Q. And that expresses power translated from the wave into the vessel, does it not?
- A. Yes, but there again, Mr. Denman, I do not want to, I would like to make myself clear on this point, I have very often seen waves breaking against the side of an advancing vessel when there were no waves; that is to say, in a smooth sea, with a rapidly going vessel, you will see that same advance. It is not the question of the wave then, so much as it is the question of the advance of the vessel. You will see that in a smooth sea. It is a natural resistance which a quiescent body like the water interposes to a rapidly moving body. It is not so much the question of the waves.
- Q. Have you ever seen waves break around the bow of a vessel at anchor?
- A. Yes. There again it is the same proposition, the current is moving. You see that when a vessel swings at anchor in the tide, a very strong tide—you see that there.

- Q. I am not talking about tide now.
- A. The vessel is very much the same only it is a difference relatively; the vessel is quiet and the current is going; the other way the vessel is moving and the water is quiet.
- Q. Have you ever seen when there is an out tide—I know you have seen this at the Fulton Iron Works—when there is an out tide and the stern of the vessel is exposed to a westerly swell? That is a very frequent occurrence in that neighborhood, is it not? A. Yes.
- Q. Have you ever seen the waves break on the stern of the [866—743] vessel in a westerly swell?
- A. I don't remember seeing them break on the stern of the vessel. I do remember seeing them break on the seawall.
- Q. Have you ever seen them snap up and break under the stern—on any vessel that was in that neighborhood?
- A. The reason I say I don't remember it is that our wharf was enclosed by the seawall.
 - Q. But you have seen vessels anchored outside?
 - A. We did not anchor any outside.
- Q. But you have seen others anchored out there a great many times, have you not?
- A. Oh, yes, but in our own basin there was no such action.
- Q. Now, let me ask you, are you still of the opinion that a vessel going into a heavy swell at say a 15-knot pace would not be deterred in the slightest

(Testimony of Lionel Heynemann.) by the fact that she was going into the swell under what she would make in smooth water?

A. No. I did not say that she would not be deterred in the slightest.

O. Then there is a possibility of translating some of that great power of the waves into a vessel with a retarding effect?

A. I don't know that I can answer that question in that form.

Q. Please repeat the question, Mr. Reporter.

(Question read by the Reporter.)

A. I should say there is some, yes.

Q. Now, if you admit the presence of the mechanical principle, the physical principle, would you care to set up your theoretical knowledge against the statement of the man who had taken the vessel through these conditions time and again, as to how much degree of retardation there might be?

A. I don't think that any practical man could answer that question [867—744] about the degree of retardation

Q. It would have to be a matter of experiment and observation, would it not?

A. It would have to be a matter of observation and experiments that would be very difficult to make.

Q. Well, presuming he is going at a pace that that would produce 15 knots in smooth water, and if there is any current at all it is a current with him, and he discovers that he is covering over land in the neighborhood of 12 knots in an hour-

- A. (Intg.) Over land—you mean by land measurements?
 - Q. No, I mean over the bottom of the sea.
 - A. From shore distances?
- Q. From shore, or over the bottom; is there any reason why he should not be able to determine that the swell had cut him down that amount?
- Mr. McCLANAHAN.—I object to the question upon the ground that there is no evidence in the case —I suppose the question is directed toward the movement of the "Beaver" is it?
- Mr. DENMAN.—No. I am trying to find out if there is any theoretical element that the captain cannot get hold of that the scientific man can when the vessel has covered in a rough sea a distance of 12 knots in an hour when, as a matter of fact, she is going at a speed that in smooth water would give her 15 knots.
- A. All that I can say is that I would be very careful about taking the statement of the one who stated he made that observation. I would be very careful about taking that statement.
- Q. Would you question the likelihood of a swell having sufficient power to cut down the vessel that amount in that length of time?
 - A. I would very much question it.
- Q. Suppose that that came from an officer of the United [868—745] States Navy who had been observing that for very many years, would you still question it?
 - A. I very often question statements made by offi-

(Testimony of Lionel Heynemann.) cers of the United States Navy although I believe as a rule they are fairly accurate.

- Q. You did make some computations regarding the turning of a vessel under a reversed propeller, based on observations made by a naval officer, did you not? A. Yes.
- Q. Those were made on naval vessels, were they not?

 A. No, that was a merchant vessel.
- Q. Oh, yes, there was one vessel that was made the basis of that computation? A. Yes.
- Q. Practically though your entire result was based on that one merchant vessel, was it not?
- A. I don't know what you mean; by the entire result of what?
- Q. Your testimony regarding the amount that a vessel would swing under a reversed propeller? You remember Mr. Dickie testified to that?
- A. Yes, I remember that we based our observations on those experiments. I also remember that you asked me about the influence of a right-hand propeller and a left-hand propeller on the tendency of a vessel and I stated at the time that I did not know about it; you mean that it was in connection with that, do you not?
 - Q. Yes.
- A. I would like to state that the reason I don't like to make any statements about matters of that kind is on account of the difficulty of making correct observations.
- Q. That was not the question I asked you, I asked you if it was not generally known among the pro-

(Testimony of Lionel Heynemann.)
fession that a right-hand propeller would swing to
starboard and you said you didn't know?

A. I said I didn't know it, but I did know at [869—746] the time that certain vessels carried a port helm to overcome certain tendencies of the vessel. Now, whether that is exactly attributable to the propeller or to other conditions is hard to say.

Q. Did you not say that the helm would have very little influence when the vessel was going ahead under a reversed propeller? A. Yes, we did say that.

Q. Now, you say that there are vessels that do carry a port helm to overcome it, is that correct?

A. I say there are vessels that carry a port helm to overcome the tendency of the vessel to go either one way or another. And other vessels again have to carry a starboard helm on account of the same thing.

Q. And the same propellers, all right-hand propellers?

A. Yes, right-hand propellers. The reason of it is this: You cannot make any two vessels, you cannot build a vessel that is exactly symmetrical to a center line. There may be differences on one side or differences on the other. To say that a vessel has a certain tendency on account of a right-hand propeller, or on account of a left-hand propeller, is a difficult statement to make, and for that reason I did not want to make it at the time.

Q. You did not understand that I was simply putting the question to you other things being equal—you did not understand I meant that? You thought

I had hidden some mysterious curve or wave in the bottom of the vessel. Let me put the question to you now: presuming other things to be equal what will be the tendency of a right-hand propeller with regard to turning the bow of the vessel as she is going ahead, the propeller being reversed?

- A. When you say "other things being [870—747] equal" what do you mean?
- Q. What will be the tendency of that force, presuming the keel-line and other lines of the vessel are properly modeled?
- A. In other words, your question is a purely theoretical one in which a vessel absolutely perfectly formed and without more resistance on one side than on another has a right-hand propeller, and whether that propeller would not have a tendency to deviate her from her straightforward course.
 - Q. Yes, upon being reversed.
- A. Oh, when being reversed, or do you mean going forward?
- Q. The vessel is going forward but her propeller is being reversed. That is the only question I ever asked you about it?
- A. Yes, I should say there is always a tendency there.
- Q. And that is well known both among shipping and engineering men? A. Yes.
 - Q. That is common knowledge? A. Yes.
- Q. Didn't you know that that is what I asked you about in the beginning?
 - A. No, I did not understand it that way.

San Francisco & Portland Steamship Co. 1027 (Testimony of Lionel Heynemann.)

Q. You spoke of deviations from the normal on the bottom of the vessel? A. Yes.

Q. They do not produce any serious effect on the vessel, do they? A. No serious effect.

Q. I mean they do not produce any effect with regard to the line the vessel will describe through the water?

A. They do. I don't know whether you have quite understood me, Mr. Denman; I make this statement, that a great many vessels going ahead—without reversing the propeller at all—have to overcome slight resistances of the vessel which would have a tendency to send her either to port or to starboard by carrying an opposite helm; certain vessels have to figure—in fact, [871—748] I will make this statement, that hardly any vessel that is built that carries a straight helm and a straight rudder will continue in calm water in an absolutely straight course.

Q. Does that vary much in vessels? There is not so great a difference in vessels in that regard, is there?

A. No. There are little differences which will cause the vessel to leave the straight line. That point may be illustrated by saying that supposing you attempt to build two sister ships on exactly the same lines—the same weights, the same everything—one vessel will show slight differences from the other, in speed and in every other respect.

Q. That is what you meant when you said it might throw her to port or might throw her to starboard?

A. Yes, sir.

- Q. So that if you attempt to build two sister ships and pursue the ordinary commercial methods of construction you might have one of those vessels, being reversed full speed astern when she is making 10 knots through the water, going to starboard and the other one going to port? A. No.
- Q. You did say, did you not, that you could not answer the question—presuming a right-hand wheel in both cases—as to whether or not the right-hand wheel would have a tendency to throw her to starboard because of the differences in the water lines of the vessel?

 A. Yes.
- Q. Now I ask you whether those differences could be so great on two vessels—sister ships built at the same time and under ordinary commercial conditions—that would throw one to starboard and one to port?
 - A. Not under other conditions, no.
- Q. Don't they try to get all vessels with the proper water lines? A. Certainly they do.
- Q. Couldn't they have slipped up on one of the sister ships [872—749] and not on the other?
 - A. Not to that extent.
 - Q. Not to that extent? A. No.
- Q. Then they both would be certain to throw to starboard or throw to port?
- A. Throw one way or the other—after a certain length of time. As we said, and as those experiments show—those experiments show that the rudder is of very little directive force in a vessel going astern until a certain distance has been passed over.
 - Q. Yes, the rudder is, but the-

- A. (Intg.) The rudder and the helm the same.
- Q. You say of less directive force when there is a strong swirl produced by the propeller right where the rudder is working?

 A. Yes.
- Q. But that is accounted for by the fact that the propeller is producing forces there, is it not?
 - A. Yes.
- Q. And though her stress of these propeller forces are things that are not at all well known by engineers—that is, you stated on your direct examination that when you came to determining questions of propeller forces you hesitated to make any positive statement, did you not? A. Yes.
- Q. And that is particularly true of a propeller going astern, is it not, under various speeds of the vessel? A. On a backing propeller, yes.
- Q. The reason the rudder does not exercise its ordinary function is because there are other forces at work? A. Yes.
- Q. And you are not able to state here as an expert what those forces are with reference to different vessels? In the first place, you are not able to state the tendency of different vessels, whether to port or to starboard—you recollect giving that testimony, don't you? A. Yes. [873—750]

Mr. McCLANAHAN.—Mr. Denman, can't you put one question at a time? You have been doubling up your questions right along. Right there you coupled another question with the first one.

Mr. DENMAN.—Well, the Court can plainly see that the first question is withdrawn, or that the sec(Testimony of Lionel Heynemann.) ond is of a different nature.

- Q. Now, presume that a vessel is of a certain depth, and we will presume that a vessel is drawing say 30 feet—we will make it even figures—and she has 6,000 horse-power, with her reversed propeller, and she is going at 15 knots through the water; the propeller is reversed, all the power is thrown into it and it turns here a point to starboard at the end of a minute; supposing you cut 10 feet off the draught of that vessel, what will be the effect? Will the propeller be likely to have more or less effect in turning the vessel to starboard?
- A. I could not tell you that. I am not able to answer it.
 - Q. What do you think it would be?
- A. I would have to sit down and think seriously on that question.
- Q. But there would be less to turn to the side, would there not? A. Yes.
- Q. And presuming the same power at work it would be reasonable to believe that the turning would be greater, would it not?
- A. If I understand you correctly, you mean to say that in the same vessel drawing less water, she would turn quicker with the same power, with the same backing power?
 - Q. Yes, with the same backing power?
 - A. I think she would.
- Q. How would that ratio be? Would it be a mathematical one, just to state 20 to 30?

A. Decidedly not.

Q. As you added each foot, would it increase? For instance, as [874—751] you went down from 20 feet to 30 would the resistance increase mathematically? A. Let me state this—

Q. Just one moment: would the resistance increase

50 per cent only?

- A. Let me state this, that in a good many of these formulas the displacement of a vessel enters as a straight factor; in other words, that vessels of different displacement would alter conditions of distance or any other factor that you are trying to get at in the straight arithmetical portion of displacement. But the formulas also contain the resistance. These resistances in a good many formulas are in the square.
 - Q. I thought so.
 - Q. And the speed very often to the third power?
 - Q. I thought so also. I am very glad to get that.
- A. So if you take vessels and compare them with each other, or the same vessel compared under different conditions of draught, you have a very complicated proposition to arrive at.
- Q. I know that, but what I want to get now is the tendency. You say that adding depth to the vessel increases the resistance, of course, on the turning?
 - A. It certainly does.
- Q. And that is increased by the square rather than by the unit?
 - A. Yes, under certain conditions again.
- Q. I am presuming the turning conditions I have described?
 - A. When a vessel turns there are a variety of re-

sistances set up. I would not be prepared at this moment, or in fact I think at any time, to answer any question about that.

- Q. Did not that enter into your determination of what the "Beaver" would do under that theoretical question as to how far she would turn? You did not have any vessel of exactly the model of the "Beaver" to compute from, did you? [875-752]
- A. We never made any computations with regard to the amount the "Beaver" would turn.
 - Q. Are you sure of that? A. I am sure of it.
- Q. All the theoretical questions were given to you to work out, were they not? A. Yes.
- Q. And you worked on all of them with the other gentlemen? A. Yes.
- Q. You agreed in the results that they got, did you not? A. Yes.
 - Q. On all of them finally? A. Yes.
 - Q. Every one of them? A. Yes.
- Q. Oh, I see I misunderstood you. What you said was: "Under these conditions the 'Beaver' is making 13.572 knots per hour through the water, and without reducing speed changes her helm to starboard, and after her head under the starboard helm has swung one-half point to port her engines are then put full speed astern, and then her helm is put harda-port, would the vessel under these maneuvers be swinging rapidly to starboard at the end of one minute, or one minute and a half, after her helm had been put hard-a-port," and you answered "No, sir." That was a relative matter, then, as to what "rel-

(Testimony of Lionel Heynemann.) ative" means, Mr. Heynemann?

- A. It was an answer to the whole question.
- Q. But the question was, would she be swinging rapidly to starboard, and you said "no, sir," and you meant by that that relatively she would not be swinging rapidly?

 A. Yes.
- Q. There might be a great difference in what vessels might be doing at that time—different vessels, of different powers and different sizes?
- A. Well, yes, I would say there would be considerable difference. [876—753]
- Q. Well, not only considerable difference but very great difference. One might be doing twice as much as another, might it not, that is, twice as rapid?
- A. No, I should say that with vessels of more or less the same size, that a vessel to turn twice as rapidly as another would hardly be possible.
- Q. Didn't you say something about the resistance increasing as the square? A. I did.
- Q. So, of course, if there is a great difference in draught between the two, there would be a great difference in the way they would turn?
 - A. Yes, I should say so.
- Q. And if there were a great difference in power there would be a great difference in the way in which they would turn? A. Yes.
- Q. So one might swing rapidly with reference to the rate at which another would make? A. Yes.
- Q. So that that answer was purely a relative answer?
 - A. You mean relative as regards rapid or slow?

I am not quite sure that I understand the question. If there is anything more on that subject I would prefer that the entire evidence be read so that I could understand more the purport of it.

Q. I will withdraw the question and the answer, if you are willing, Mr. McClanahan. He simply says he does not know. He said he did not understand the question, and I will withdraw the whole thing.

Mr. McCLANAHAN.—But his answer is coupled with a request. Will you comply with the request, or don't you care to go into it? [877—754]

Mr. DENMAN.—I will let the record stand.

Mr. McCLANAHAN.—I object to the question and answer being withdrawn.

Mr. DENMAN.—Q. What can you say as to responsiveness to helm with vessels of the same tonnage, where one has narrow deep lines and the other has shallower broader lines; which is the more likely to respond to the helm?

A. That depends on a great many conditions.

Q. It does?

A. Yes. The one vessel might have a natural tendency to turn quicker, might have a small rudder—

Q. Presuming the same rudders?

A. Well, what do you mean by the same rudders,—the same size rudders, the same area?

Q. The same area?

A. And the same effective area of rudders?

Q. Yes.

A. Now, I would like to have that question repeated. (Question read.) If you state that the two

vessels have the same tonnage it brings up a complicated situation because take, for instance, a vessel drawing 30 feet, and say with 40 feet beam, and a length of 400 feet, to produce a vessel that shall have the same displacement, say with half the length and half the beam, would bring about a very complicated situation that I am not able to answer just now.

- Q. I understand what you mean. Presume the same length.
- A. I may say that there was a vessel constructed more or less on that plan, the "Livadia," she was a Russian vessel, built with a beam of 150 feet and a length of about 300 feet. Very extraordinary conditions were obtained by that vessel, very extraordinary phenomena were observed.
 - Q. Did she mind the helm?
- A. I don't remember that feature of it. I just make that explanation [878—755] to show you that these questions are not so easy to be answered.
- Q. Well, taking it within the ordinary commercial types?
- A. You simply mentioned the same tonnage; now, you are adding the same length; then you would have to have an enormous multiplication of beam in order to get at the same tonnage. I don't know just exactly what you do mean, Mr. Denman.
- Q. You would not recognize that as the sort of a question that a practical man would put to you?
- A. I could easily understand your asking these questions for information, and I am giving you my answer to show you the difficulty of giving you the

(Testimony of Lionel Heynemann.) information that you want.

Q. How is the resistance factor calculated? How does it vary in determining the stopping of the "Selja" in your results here? What does it vary with in your calculation?

A. The formula for resistance that we have used shows a variation of resistance as the square of the speed.

- Q. Is that the only variable in it?
- A. Then the question of skin resistance comes in.
- Q. What does that vary on?
- A. That varies according to certain experiments that have been made by various—
- Q. (Intg.) Pardon me, but what does it vary on in your formula in regard to the ship?
- A. We have taken a certain fractional coefficient as the basis of our calculations.
- Q. What does that vary on from one ship to another?
- A. On the amount of skin friction of the one and on account of the wave making resistance of the other.
- Q. But you must get something out of your different ships that you apply your variable to, or your constant to? You have [879—756] a constant I presume? A. We have a constant, yes.
 - Q. The variable you get out of the different ships?

 A. Yes.
- Q. The skin resistance—what is that, the surface of the ship?

 A. The surface of the ship.
 - Q. The skin resistance, is that what we used to call

San Francisco & Portland Steamship Co. 1037

(Testimony of Lionel Heynemann.) in school molecular attraction? A. No.

- Q. Well, what is it?
- A. It is simply the resistance of a body going through the water, that is to say, of two surfaces, the water surface and the ship's surface; it is the friction between the two surfaces.
 - Q. That is due to molecular attraction, is it not?
- A. No, I do not think it is. The theory of friction is also more or less complicated. The theory of friction is that when one surface passes over another, that no two surfaces can be made absolutely even, that there are slight pimples you might call them, slight protuberances on each surface. You may say that both of these surfaces act like one file on another, and it is a lifting over of these little particles which is one theory of friction.
- Q. Then there is presumed to be a certain amount of molecular attraction in it?
 - A. Yes, that might be.
 - Q. But that is a very minor factor?
- A. I believe there are also theories of molecular attraction as underlying the theory of friction.
- Q. So that the second variable is this skin friction? A. Yes.
- Q. And that varies in your formula as the skin surface?
- A. As the actual amount of square feet immersed. [880—757]
 - Q. What other variable is there?
 - A. There is the wave-making resistance.
 - Q. The wave-making resistance—that is taken

(Testimony of Lionel Heynemann.) care of in your formula, is it? A. Yes.

Q. What does that vary as?

A. That is rather a complicated formula. The principal part of it is, of course, the speed. When it comes to slow speeds the wave-making is negligible.

Q. So you counted that out on the "Selja," did you?

A. Yes. But for higher speeds, when you get above 10 or 11 knots, it does begin to play quite a part. When you get to still higher speeds then the wave-making exceeds the frictional resistance.

- Q. But in this case you presume there was no wave-making element in determining how long it would take the "Selja" to stop, did you, going 3 knots at 3.10? A. No.
 - Q. What other variable is there?
 - A. There is the displacement.
 - Q. The displacement is a variable, is it?
 - A. Yes.
 - Q. What other one?
 - A. That is about all that I can remember.
 - Q. That is all you used, is it not?
- A. That is all we used so far as I can remember now.
- Q. Is there not friction coming from any other source?
- A. Yes, there are quite a variety of frictions. This is the friction of the propeller itself. There is what is called a wake factor.
 - Q. Did you compute the wake factor?
 - A. No, we did not compute the wake factor.

Those are all more or less negligible quantities. The only reason I mentioned that was because you [881—758] asked the question whether or not there were not other factors.

- Q. The water factor is a pull, is it not?
- A. Yes, it is a pull.
- Q. A pull back?
- A. No, a pull forward. The wake factor is a factor which acts with the vessel.
- Q. In other words, these other factors that produce a forward motion in the water—that motion helps the ship? A. Yes, sir.
- Q. In other words, the friction has gone on and becomes helpful to a certain extent? A. Yes.
- Q. What other variable is there that you did not use? A. We did not use the air resistance.
 - Q. What other one didn't you use?
- A. By air resistance I mean, of course, wind resistance. I don't necessarily mean wind resistance.
- Q. You mean the resistance of the superstructure moving through the air?
- A. Yes, that is what I mean. The air resistance is something else. We did not take the air resistance into account; we did not take the currents into account.
 - Q. Did you take the rough sea into account?
 - A. Yes, we took that into account.
 - Q. How much did you allow for that?
 - A. I don't remember.
- Q. Did you allow the same that the other gentlemen did? A. Yes.

- Q. How did you come to allow the same amount for sea resistance that the other gentlemen did?
- A. Because we made up our minds, based on literature that we had gone over, what would be a fair allowance.
- Q. What was that—how much of a factor was that in it? A. Not very much of a factor. [882—759]
 - Q. How much?
- A. Well, there was a question in relation to the slip.
 - Q. It could not be in the slip-
 - A. (Intg.) I think we took that and-
- Q. Just pardon me a moment; you did not take into account the variable that arises from the condition of the sea in determining how quickly you would stop after 3.10? A. No, we did not.
 - Q. But you did use that in other calculations?
 - A. We did, yes, sir.
- Q. What other variable is there that you did not use that you might have?
- A. I think I mentioned current; we did not use that.
- Q. All these questions have been how long it would take to stop her in the water; a current would not have any effect in her stopping in the water, would it?

 A. I think we went through that.
- Q. It would not. I think we agreed on that so far as the water is concerned.
 - A. I think we went through that.
 - Q. All these matters are with reference to her

stopping in the water. What other variable is there that you did not use that you might have used? Is there not an important one?

A. Let me see; I have mentioned the skin friction and I have mentioned the wave-making and the wake factor and the wind and the current and the waves. I don't remember.

- Q. Take your extraordinary freak Russian ship and—
 - A. (Intg.) Oh, you mean the form of the vessel?
 - Q. Yes. You did not mention that, did you?
 - A. No, I did not mention that. [883-760]
 - Q. You don't think that plays any part in this?
- A. Well, it does in so far as the form of the vessel regulates the displacement; the displacement is supposed to take those conditions into account.
- Q. So that if you had a rubber ball of the same displacement as the ship she would go just as far if she had a 3-knot speed at 3.10 as the ship would?
 - A. No, she would not.
- Q. Then there is something in the form, is there not? A. Yes, there is.
 - Q. It is a very serious factor, is it not?
 - A. Yes.
 - Q. Why did you not mention that before?
 - A. Because it did not occur to me.
- Q. Did it occur to you in the making of the calculation? You heard what Mr. Dickie testified in regard to that, did you not?
- A. No, I don't remember that he did testify to it. I don't remember that I heard him.

- Q. Would you say that it made any serious difference? Or would you contradict him if he had said it made a serious difference as to what the form of the vessel was?
- A. I should say it would make a serious difference. But when you put it in the way you put it with reference to a rubber ball and the shape of a vessel, such as vessels usually are-
- Q. But you have been telling me that there is a tremendous difference in the way in which the space was occupied, and the same displacement of the vessel, a tremendous difference in form between different shapes of vessels? A. Yes.
- Q. And I understand you now, that would make considerable [884-761] difference as to the time in which it would take a vessel to stop.
 - A. I should think it would.
- Q. And you did not take that into account at all in determining how long it would take the "Selja" to stop?
- A. No, I did not, and the reason I did not take that into account is because we are comparing more or less similar vessels
- Q. How do you mean, comparing more or less similar vessels?
- A. The "Selja" was a vessel of 7,000 tons displacement and the "Beaver" a vessel of about 4,600 or 4,800.
- Q. What has that got to do with the stopping power? You would apply the same formula to the "Beaver" as you would to the "Selja," would you

not? A. Yes, I would.

- Q. The molds of those two vessels are quite different, are they not?

 A. Yes, they are distinct.
 - Q. They are distinct? A. Sure.
- Q. If the "Beaver" had the same displacement the "Selja" had but maintained her present lines, she would stop at a different rate through the water, would she not?
- A. Yes. I will make this statement, that there is another factor which I forgot to mention—
 - Q. Let us keep on this factor first.
- A. This bears a distinct relation to the information you are seeking to get. I refer to the block coefficient. The block coefficient takes the form of the vessel into account.
 - Q. The block coefficient does? A. Yes.
 - Q. That was utilized? A. That was utilized.
- Q. You had not mentioned that up to this point, had you? A. No. [885—762]
 - Q. What is the block coefficient?
- A. The block coefficient is that fraction of the prism consisting of the length, width and depth of the vessel as a square box compared to the actual amount of volume displaced by the water. It is the relation between those two. That takes exactly into account what you are trying to get at.
- Q. What was the block coefficient,—what was the formula for that you used with reference to the "Selja" in determining how much she dropped?
- A. The block coefficient contains the following data, if I remember correctly; it contains the two-

(Testimony of Lionel Heynemann.) thirds power of the displacement, the third power of the speed, and the horse-power.

- Q. What is that? Give me the three elements again.
- A. The three elements are the two-thirds power of the displacement multiplied by the third power of the speed and divided by the horse-power.
 - Q. What do you mean by speed?
 - A. That produces—
- Q. Answer the question, what do you mean by speed? A. The speed of the vessel.
- Q. Do you mean your engine-driving power, or do you mean her speed through the water?
- A. The speed through the water. Pardon me if I continue: This formula that I give produces a constant and this constant—known as the admiralty constant—also takes the matters into account that you are speaking of.
- Q. That is just what I want to get at; which one takes into account the difference in mold in the vessel?
- A. I think I would like an answer to a question changed; I [886—763] think I got these two factors mixed up between block coefficient and this constant. I think I started to state what the block coefficient was.
 - Q. Yes, and I was following you on that.
- A. That is a box that is figured with the length, breadth and depth of the vessel and compared with the actual volume of displacement.
 - Q. I want to get the formula for that that you

San Francisco & Portland Steamship Co. 1045

(Testimony of Lionel Heynemann.) used in computing the rate at which the "Selja" slowed.

A. The formula for the box coefficient is about as follows. It is known as the Kirk Formula. Mr. Kirk builds in his mind around every vessel a certain box; that box has a middle body, a fore-body and an aft-body; he has given certain rules to figure these three bodies. I don't know that I have got these rules exactly in my mind. You can find them in every text-book.

- Q. But you applied them when you computed this?
 A. Yes.
- Q. What portion of the result that you have testified to here is gotten out of this block coefficient?

 Just give me the figures.

 A. I could not tell you.
- Q. What did you find was the box coefficient of the the "Selja"?
- A. I believe that the box co-efficient of the "Selja," as near as I can remember, was something like point 06—no, it was higher than that. It was something like .07 or .075. In other words, so that I am correct about that, the block coefficient of the "Selja" was .075. It means this: if you built a box around the "Selja"—
- Q. (Intg.) I understand what it means, I am trying to find out how you got it.
- A. I got it by working it out according to standard rules, [887—764] according to the Kirk Formula. There are different formulas. Mr. Durand, the Professor of Mathematics at Stanford, has given a rule for figuring the block coefficient. Mr. Taylor,

the Naval Constructor at Washington-thev have certain rules there, but I don't remember just what those rules are, but I have figured by all three of them

Q. They all agreed?

A. No. they did not all agree, but they agreed closely enough for practical purposes. I would not positively state that the "Selja's" block coefficient was .075, because that is simply a matter of memory. I made so many figures about it that I would not state

Mr. McCLANAHAN.-Q. Mr. Heynemann, you said .075-you mean 0.75, do you not?

A. I mean .75; I mean seventy-five one-hundredths of the total volume that would be displaced by the box built around the vessel. I know that the "Selja" had a much higher block coefficient than the "Beaver."

Mr. DENMAN.-Q. What part does the block coefficient play in the checking? What percentage of it is attributable to that?

- A. I could not answer that question.
- Q. You had to know that, did you not, in getting this result?
- A. These things all enter into these formulas but when so many factors enter it is difficult to say.
 - Q. Is that a very important factor?
 - A. Yes, it is.
- Q. How does that checking power vary in the block coefficient—by the square?

San Francisco & Portland Steamship Co. 1047 (Testimony of Lionel Heynemann.)

A. The displacement, as I have said before, enters into certain calculations in the two-thirds power. The block only determines the displacement. The [888-765] two-thirds power is not an easy figure to grasp in your mind. It really means the third root of the square. It is not an easy figure to get into your head.

(Thereupon a recess was taken until 12 P. M.)

AFTERNOON SESSION.

Mr. McCLANAHAN.—I understand from you, Mr. Denman, there is no further cross-examination? Mr. DENMAN.—No.

Mr. McCLANAHAN. -- And there is no redirect examination.

(The further hearing was thereupon continued until tomorrow, Wednesday, July 26, 1911, at 10 A. M.) [889—766]

Wednesday, July 26th, 1911.

[Testimony of James Dickie, for Claimant (Recalled —Cross-examination).]

JAMES DICKIE, recalled for further cross-examination:

Mr. DENMAN.—Q. Mr. Dickie, on your direct examination the following question was put to you:

"Q. If the Beaver' on her course out through the Golden Gate passes the North Heads at 1:37 P. M. and Red Buoy No. 2 at 1:45 P. M., without changing the revolutions of her engines, the distance between the two points being 2 knots, and proceeds under the same conditions

until 3:10 P. M., how far would she have travelled and at what rate of speed from 1:37 P. M."?

Your answer to that question was:

"23.25 knots, and the rate of speed would be 15 knots."

You recollect that, do you not?

- A. No, I am looking for it now.
- Q. It is the first question. A. Oh, yes.
- Q. You meant by that the same sea conditions, of course, continuing after they had left the North Channel? A. Yes.
- Q. Would the sea conditions have anything to do with the rate of speed of the "Beaver"? A. Yes.
- Q. Your son in testifying made a distinction between harbor and sea conditions.
- A. Sometimes the sea conditions are exactly the same as harbor conditions, but not always.
- Q. Yes, but he used the phrase "under sea conditions"; what does that mean?
- A. That means when we take a ship on the trial trip and get 12 or 13 knots out of her, we take off half a knot or three-quarters [890—767] of a knot, as the case may be, for sea conditions.
- Q. Did you ever take off anything more than that for sea conditions? A. Not generally.
- Q. Not generally; in other words, you would not be likely to have a trial trip on a day that presented unusual conditions?
 - A. We have had trial trips on days that did pre-

sent unusual conditions, but we made an allowance for that

- Q. But on trial trips the idea is to take out as many of the variables as possible? A. Yes.
- Q. And to get down to your constants, to have a fair sea, a smooth sea, if possible? A. Yes.
- Q. That is so as to get down to a close calculation. All the other elements disturb your calculation in a way that you cannot mathematically ascertain, do they not? A. Yes.
- Q. I do not recollect whether it was you or one of the other experts, but it seems to me that you testified that a swell without a wind into which a vessel was heading would not affect her speed; is that correct?
- A. If the swell was not large it would not affect the speed. It would affect the speed but very little.
 - Q. Suppose the swell were very large?
 - A. Then it would affect the speed.
- Q. And affect the speed considerably, would it not?
- A. In a very fast, ship not so much, but in a slow ship a great deal.
- Q. Would that affect the ship's speed whether the sea was running aft?
- A. If there was no wind; no. The sea does not run.
- Q. I am presuming this: suppose there is a heavy swell; no wind; the storm has gone down but you have a heavy swell at sea? [891—768]

- A. Then it has no head and it has no tail, just simply a swell.
 - Q. Does it have any movement?
- A. No lateral movement; a slight lateral movement but it comes back to the same position again.
- Q. The water does, the individual molecules of the water, but isn't there any movement?
- A. If you put a log of wood in the water that log will not travel, that log will move, but will come back to about the same position.
- Q. Do you mean to assert then, Mr. Dickie, that because the molecules of water remain in practically the same position, that they transmit no lateral force to one another and through one another?
- A. The wave moves a certain distance but it comes back again like a pendulum; that is, providing the water is deep enough.
 - Q. I am presuming that the water is deep.
- A. That the water is deep. If the water is shallow the sea travels; that is what causes breakers.
- Q. You mean to say there is no resultant lateral motion in a swell at sea transmitted through the molecules of the water?
 - A. Let me put it in another way for you.
 - Q. No, answer my question, please.
 - A. I don't understand your question.

Mr. DENMAN.—Mr. Reporter, read the question to the witness.

(Question read by the Reporter.)

Q. That question has got to be answered yes or no.Can you answer it? A. Yes and no.

- Q. Which is it, yes or no, both?
- A. Both of them.
- Q. It is both of them?
- A. Both of them. [892—769]

Mr.McCLANAHAN.—Now, make your explanation, Mr. Dickie.

A. If I place a log of wood say a mile off Pt. Reyes, or any position in the water, and I come back 3 or 4 hours afterwards I will find that log has not changed its position. It has changed its position 2 or 3 times but it has come back there again.

Mr. DENMAN.—Q. How is it if there is a storm at sea say 1,000 miles away, perhaps, and the storm ends there, or turns to the right or the left and does not come on ahead, that you will find transmitted clear up to the shore 1,000 miles off the wave motion created at sea? A. Yes.

Q. I say, how does it get there?

A. Because the one wave acts upon the next one, and upon the next one, and upon the next body of water, and when this fellow falls the next fellow rises, and when that fellow falls the next fellow rises, and when that fellow falls the next fellow rises, and then there has been a lateral transmission of power for 1,000 miles.

Q. Yes, but no lateral transmission of the molecules of the water for those 1,000 miles? A. No.

Q. And when that hits against the cliff 1,000 miles away, that power that jars the cliff and sends the spray over the top of the cliff is a power created 1,000 miles away? A. Yes.

- Q. That is transmitted, is it? A. Yes, sir.
- Q. Do you want to say that if that hit the broadside of a ship it would have no effect on it?
 - A. But you are getting away—
 - Q. Answer my question, please, Mr. Dickie.
- A. It will have a local effect, yes. For instance, if it [893—770] hits the broadside of a ship she will swing a little but then she will swing back to the same position again.
 - Q. She will? A. Yes.
- Q. How is it that the power hits the cliff and jars it and sends the water over the top of it?
- A. Because it cannot transmit it to the next wave and consequently it hits the cliff and then falls back.
 - Q. And this is transmitted to the ship, is it not?
- A. Yes, but the next time it comes again she just swings.
- Q. But it is already put into the ship—that power is.
- A. No, it is not put in the ship. The motion of the molecules of the water swing like a pendulum and they swing back again and have the same motion.
- Q. But if the power is translated into the ship, they never come back again?
 - A. The ship follows the molecules of the water.
- Q. But if the power is translated into the ship and the ship is travelling that much, there is no molecular return on the part of the ship.
- A. And there is a molecular return on the part of the water and that takes the ship back again with it.

Q. But if that power is expended in driving the ship broadside—

A. (Intg.) It is not expended, it is only stored up.

Q. Then why is it, Mr. Dickie, that on the lee side of a ship you have quiet water in a swell?

A. Oh, you are talking about the wind now. That is a different proposition altogether.

Q. All right, take the side away from the swell.

A. There is no side away from the swell.

Q. What is that?

A. There is no side away from the swell. [894—770]

Q. Do you mean to say that a swell has no direction?

A. No direction.

Q. It has no direction? A. No direction.

Q. If a swell is described by Captain Lie as a westerly swell, he describes a thing that is non est?

A. He describes a thing that does belong there because it is caused by a westerly wind and the westerly wind is still there.

Q. But suppose it is calm?

A. Well, either one side of the wave is the same as the other side of the wave; either that or everybody is wrong—not me. I should have brought up my book on the subject—White's Naval Architecture. It brings that out pretty clearly.

Q. Are you correct or is Mr. White correct?

A. Mr. White is correct and I am correct and Mr. Froude is correct.

Q. Did you ever hear of any sea captain who

(Testimony of James Dickie.) would agree with you on that?

- A. I never asked of a sea captain to agree with me.
- Q. Did you ever talk it over with any sea captain?
- A. I will tell you what I have done-
- Q. (Intg.) Did vou ever talk it over with any sea captain?
- A. Not particularly, no, sir, but I will tell you what I have done: since this case came up I put a log of wood over in the creek, at Oakland Creek, and watched the swell from the steamer's paddle and it did not move, it only swung.
- Q. That was right on top of the wave itself, was it not? A. It was in the wave.
 - Q. But it did not have any water down below it.
- A. I forget the depth that a wave travels down. I think it is nine times its height, if I remember right. I will not be [895-771] positive about The foundation of the wave is about nine times its height, I believe. But below that the water is absolutely still. I will not be positive of the figure 9, but it is somewhere in that direction.
- Q. But there is a difference in the rapidity of the motion as you approach the surface of the wave, of course? A. Ves.
- Q. And the greatest agitation is at the surface of the wave? A. Yes, the greatest movement.
- Q. So, if the ship were going through the water, presuming that the ship had a draught of 20 feet,supposing it were going through the water and the log was out behind floating on the surface, the log would have a different set of forces acting on it,

would it not? A. Not except there was wind.

- Q. But didn't you just say that the variation of forces at the surface of the water in a wave was different from what it was beneath?
- A. I did, but suppose the wave moves 5 feet one way and 5 feet back again, it comes back to the same position, doesn't it?
 - Q. Did you ever see a swell come back?
 - A. The timber does not move any.
 - Q. Did you ever see at sea a swell come back?
- A. It has an up and down motion and a pendulum motion.
- Q. Can't you see a wave move, can't you see a wave move any?
 - A. No, positively, not except there is wind.
 - Q. Can't you see the ripple move?
- A. But the ripple is caused by the wind; that is motion.
 - Q. Have you ever seen a swell move at sea?
- A. No. It apparently moves, but it is just the same as a sheet of paper you have seen in a panorama, it is just the same motion. [896—772]
- Q. You can see the motion move, can you not—it has a beginning and an end?

 A. No.
- Q. Take the crest, does not the high place move on?
- A. Yes, the crest travels but the molecules of water do not travel.
- Q. We admit that, but they transmit force laterally, do they not? A. No.
 - Q. How does the crest come to travel if it is not

(Testimony of James Dickie.) transmitted laterally?

- A. It is transmitted vertically.
- Q. Is not the resultant lateral? Is not the resultant move of the crest lateral? A. No.
 - Q. What do you mean by "lateral"?
 - A. Horizontal.
- Q. Well, then, does not the crest travel horizontally?
- A. It apparently travels horizontally but the molecules of water do not travel.
- Q. Let us omit the molecules. We will suppose them to be gone from this point; but you have established that the molecules themselves have a very small radius of motion. We will presume that. My question is what happens to the power they transmit. You admit great power is transmitted, do you not?
 - A. It is transmitted vertically.
 - Q. And its resultant is horizontal, is it?
- A. No. You can have the resultant anywhere you like. You can transmit power anyway.
- Q. But if the waves beat the cliff 1,000 miles away from the storm, the resultant force is transmitted horizontally, is it not?
- A. No. The cliff is an object and that wave travels up against it. Then you have a different motion. It flies up in the air. [897—773]
- Q. But how did the force get there? How did it travel that 1,000 miles from the storm at sea to the cliff, if it was not transmitted laterally by the motion of the molecules of the water?
 - A. Let me ask you a question. How does elec-

(Testimony of James Dickie.) tricity get along the wire?

- Q. Then you think it is an electric force?
- A. No, it is not an electric force.
- Q. It is a physicial force?
- A. Yes, it is a physical force.
- Q. You say there is no resultant lateral force?
- A. I did not say there was no resultant lateral force; I said there was no resultant permanent lateral force.
- Q. What is it that moves the water against the cliff if it is not force in the form of motion?
- A. There is that pendulum motion that I spoke of to start with. That is all you have of lateral motion. When it cannot swing back, if it hits something it is just the same as a pendulum hitting something, it stops. It takes a certain amount of force to stop it. If you stop it it flies upwards.
- Q. Suppose it hits the side of a ship and flies upwards.
- A. If the wave is small in proportion to the ship it is the same thing.
- Q. In other words, the force is translated into the ship? A. Into the ship.
 - Q. And to the extent—
- A. (Intg.) That is, it is hit on the side of the ship and is absorbed.
- Q. Now, suppose it is the bow of the ship, would the same mechanical principles be at work, the only difference being the question of form and the surface exposure? [898—774]
 - A. No, you have a different proposition there.

The wave is split and goes on the two sides.

- Q. Do you mean to say there is no transmission of force into the vessel itself?
- A. It is not a lateral transmission, it is a vertical transmission. It is the motion of the ship. If the ship could get steady you would not know the difference. What you lose at the bow you would pick up at the stern.
- Q. Would it be the same in striking the ship as the water striking the cliff?
- A. No. You would get the resultant at the other end.
- Q. How could you get the resultant at the other end if the force is exhausted in striking the ship?
- A. Let me put it to you in another way and I will prove to you that it would be like moving in a swell; if a ship has an ordinary shaped bow and a scow stern, she will move ahead in a swell without wind.
 - Q. She will?
 - A. Ves. That is a well-known fact.
 - Q. Then there is a translation of these forces?
- A. Vertically. It is the vertical force under the slant stern and striking it at an angle that forces the scow ahead. You are getting very deep into this thing.
- Q. Oh, no, it is not deep at all. I have no difficulty in following you at all, and I am not a particularly skilled man. That seems to me to be an entirely reasonable supposition, assuming your hypothesis is correct, that that resultant force is vertical.

A. It is vertical, with a pendulum swing.

Q. It is more than a pendulum because the force does not come back to the center of the sea that is sent to the cliff.

Mr. McCLANAHAN.—Are you testifying now? [899—775]

A. It does if there is no wind, or else all authorities on the subject are wrong.

Mr. DENMAN.—Q. If the force that is sent out 1,000 miles from shore by the storm, when it strikes against the cliff it comes back to the center of the sea, does it?

A. Part of it comes back into the sea, which makes a swell; the other is extended vertically, flying up in the air vertically or breaking something.

Q. It is extended in indenting the cliff?

A. Yes.

Q. And that as it strikes the cliff it is a horizontal motion?

A. That is the pendulum swing again.

Q. It may be a pendulum swing but it is a horizontal motion; it never swings back, does it?

A. Yes, it swings back.

Q. When it strikes the cliff?

A. Part of it swings back and part of it goes up in the air if the cliff is vertical.

Q. And part of it is taken up in rearranging the molecules of the cliff, is it not? A. Yes.

Q. And that is what wears cliffs away, is it not?

A. Yes. And let me get back to one fundamental thing, there is no forward motion to a sea, no permanent forward motion to a sea except there is wind.

- Q. Then how is it that it is transmitted 1,000 miles if there is no forward motion? I admit it is not the water but I am talking about the force.
 - A. The force is an unseen thing.
- Q. I don't care whether it is unseen or not. We know it is there. A. It is transmitted vertically.
- Q. How can it be transmitted vertically and reach a horizontal destination?
 - A. It is only apparent motion horizontally.
- Q. Is the thing that hits the cliff only apparent or has it [900—776] travelled 1,000 miles?
 - A. No, it has the pendulum motion.
- Q. Is there one swing of the pendulum for the 1,000 miles?
- A. Yes. If you drop a stone in the middle of a lake the waves will go to the side.
 - Q. And you say there is no resultant lateral force?
- A. And anything in the path is just lifted and dropped back again as they pass; anything in the path of the waves is just lifted vertically and dropped back again to where they were.
- Q. Suppose you were in a small boat at sea, in a very heavy swell—presume it is a westerly swell and its force deceitfully appears to be travelling along with the course of the swell in an easterly direction, and you were in a small boat at sea, would you rather be out in the open sea than on the easterly side of a large Atlantic liner that was lying in the trough of the sea?
 - A. I would not care which side I was on.
 - Q. That is, the conditions would be exactly the

same on the easterly side of the liner as they would be on the westerly side, and 1,000 feet away from it?

- A. Yes, except that there was wind.
- Q. Have you got the blue-print that was prepared, plotting the stopping of the "Selja" which Mr. Heynemann had here yesterday?
 - A. I have seen it. I think it is here.

Mr. McCLANAHAN.—You mean the blue-print prepared by Mr. Heynemann?

Mr. DENMAN.—I don't know who prepared it, his name is on it.

The WITNESS.—He prepared it.

Mr. DENMAN.—Q. Did you examine it?

- A. Yes. [901—777]
- Q. Is it correct?
- A. I think it is pretty near correct.
- Q. Does that agree with the figures you first gave as the time it would take to stop?
- A. His are theoretical figures, mine are practical figures. There is a slight variation.
 - Q. You are a navigator then, are you?
 - A. No, I am not a navigator.
 - Q. What do you mean by practical?
 - A. Taken from data.
- Q. Well now, you can get me that data, can you not? A. Yes.
 - Q. I would like to see that.
- A. I will tell you what it is taken from—it is taken from the "Wisconsin," and the data comes straight direct from the Bureau at Washington.
 - Q. And you based all your conclusions on that

(Testimony of James Dickie.) data? A. For the "Selja" only.

- Q. For the "Selja" only? A. Yes.
- Q. And you estimated the stopping time of the "Selja" on the stopping time of the "Wisconsin"?
 - A. Yes.
 - Q. What is the "Wisconsin"?
 - A. A battleship, built at the Union Iron Works.
 - Q. What is her maximum speed?
- A. If I remember right, the maximum speed was 17 knots; 16 or 17 knots. I am talking now from memory.
 - Q. Yes, I know; it was about that, was it?
 - A. Yes, about that.
 - Q. What was her tonnage?
 - A. The displacement was about 11,000 tons.
 - Q. What was her length?
- A. 348 feet, I think. That is a matter of record; it is somewhere about that. [902—778]
- Q. What time did it take the "Wisconsin" to stop in?
- A. We have her timed from 6 knots; it was 20 minutes.
 - Q. From 6 knots, and it was 20 minutes?
 - A. Yes.
 - Q. Have you got the gradations of time down?
 - A. No.
- Q. Then you do not know when she was at 3 knots, according to that data?
 - A. I can only form that theoretically.
- Q. How did you reduce down the various periods of time? Was it divided in half for 3 knots?

San Francisco & Portland Steamship Co. 1063

(Testimony of James Dickie.)

- A. Not quite, but very nearly.
- Q. Very nearly? A. Yes.
- Q. Don't you know that the lower portion of the reduction is very much slower? A. I know it.
 - Q. Why did you divide it evenly then?
 - A. I did not divide it evenly.
 - Q. Where did you place the figure?
 - A. I gave the line a little curve.
 - Q. How much of a curve?
 - A. I don't remember now.
- Q. Was that curve based on any experience you ever had?
- A. I have had more experience than any other man on the Pacific Coast. Yes.
- Q. What experience have you had in the matter of determining the curve, as to the stoppage of ships?
- A. I should have brought it up with me. I have it absolutely, taken every half second.
 - Q. On what ship?
- A. The cruiser "California" and the cruiser "South Dakota" and the cruiser "Milwaukee" and some others.
 - Q. You have those curves for those cruisers?
 - A. Yes.
- Q. And all these conclusions you have come to, have been based on the Government reports on these war vessels? [903—779]
- A. No, these are my own. I had a special machine for taking them in launching. It is the same performance.
 - Q. In launching? A. Yes.

- Q. Are not the vessels very light, under ordinary launching conditions?
 - A. The "South Dakota" was 6,180 tons.
- Q. I mean light as compared to their normal draught lines.
- A. Yes, but that does not make any difference. It does just as well.
- Q. Your theory is that a barge would go just as long as a yacht? A. I did not say so.
- Q. You say that the draught of a vessel does not make any difference?
- A. I say the displacement makes a difference but that is easily allowed for.
 - Q. Does not the draught make a difference too?
 - A. Very slight.
 - Q. A very slight difference? A. Very slight.
 - Q. Is not the water more compact as you go down?
 - A. No.
 - Q. Is not the resistance greater as you go down?
- A. No—positively. I know that a submarine goes the same if she is 2 feet under water as if she is 20 feet under water. She goes with the same speed and the same power.
 - Q. Does she stop in the same time?
 - A. She stops in the same time.
 - Q. Have you ever experimented on that?
 - A. I have the data for it.
 - Q. What is the data for the submarine?
- A. It made no difference how far down you went. It made no difference.
 - Q. Is that true as to stopping?

San Francisco & Portland Steamship Co. 1065 (Testimony of James Dickie.)

A. I don't know about [904—780] the stopping of submarines. I don't know anything about that. If it does not make any difference in the propulsion it does not make any difference in the stopping because stopping is only stored up energy used up.

Q. Let me see your data as to speed?

A. You mean as to the stopping of ships?

Q. Yes. A. You want the launching data?

Q. Yes.

A. I don't have it with me. I published a paper on the subject, a paper which was read in England, about 5 or 6 years ago. I have that in my office. It was taken every half second all the way down; all the way to a stop. First I figured it and then made machines so that I could check up the figures and the figures checked up very well.

Q. That was a case where your theory and your practice worked out?

A. Yes. And I can explain the difference between mine and Mr. Heynemann's here. No man can tell when a ship is stopped. There is a long period at the tail-end when neither theory nor practice can tell. For instance, an ounce of pressure would move the "Selja" but there is no man can tell how much it would move her.

Q. So that the tail-end of the calculation—

A. (Intg.) The extreme tail-end is always a little doubtful. One barnacle in a ship will make a difference. I don't think you could measure it but it would be there. The barnacle would make less difference

(Testimony of James Dickie.) at the tail-end of the curve than it would at the first end of the curve.

Q. All these observations as to stopping that were made on these various ships, were made in as calm a sea as possible?

A. In as calm a sea as possible, general trial trip conditions. I was at one—I can't remember which it was, I think [905—781] it was the "Olympia" weighing about 5,000 or 6,000 tons, and there was a question amongst three or four of us as to when the ship was stopped, and finally we threshed the thing out and came to the conclusion it would never stop unless there was some force against it, theoretically. The captain said, "I will settle that, she is stopped now."

Q. Well, being on board, you were compelled to accept his dictum, were you not? That is the usual condition of those on board the ship, that they have to finally accept the captain's dictum as to whether or not the vessel is stopped or moving; that is correct, is it not? A. No.

Q. Well, I will admit that for you, Mr. Dickie.

A. When I started to take stopping data at the Union Iron Works, I asked every captain who came on the dock to dock his vessel, for about 9 or 10 months, how far a vessel would travel and I got the wildest answers—from feet to miles. They were absolutely helpless, absolutely useless. They were intelligent men too. And I didn't blame them.

Q. How about those men who had tried it? That is due, of course, to two things, is it not—first, that

many men are not good observers? A. No.

- Q. And the other is that the stopping time down at the end is very difficult to determine, is it not?
- A. It is very difficult to determine, yes, at the tailend it is very difficult to determine it.
- Q. And that slow motion would be subject to a large number of variables, that is, it would be more affected than variables than when the vessel is moving rapidly; I believe you said that, did you not?
- A. Yes; the least wind would have more effect, a small quantity of wind would have more effect on the [906—782] slow speed.
- Q. And likewise the agitation of the water, making a different amount of skin exposure, for instance.
- A. There would be no difference in the skin exposure practically.
- Q. Is there any particular force existing—I don't know this, I am asking you to get information from you; is there any particular force existing at the water line of a molecular nature exerted on the ship? For instance, we know that the skin of the surface of the water has a force in it that does not seem to be present in the body of the water itself and will sustain small insects and that sort of thing.
 - A. I don't understand your question.
- Q. Is there any molecular attraction between the surface of the water and the side of the ship that does not exist below? A. No.
 - Q. Are you sure of that, Mr. Dickie?
- A. I am sure of it because I know it makes no difference in the tank experiments, whether you take

(Testimony of James Dickie.) the wetted surface down at the bottom or up near the top.

- Q. You would have your force exerted in both cases? A. There is so much wetted surface.
- Q. But you would not be able to distinguish in your experiments between the force exerted right at the surface and at the bottom?
 - A. Yes, you would.
 - Q. Why?
- A. Because they have tried them, extremely shallow vessels right at the top of the water and they have tried them extremely deep. Sometimes as you go deep the results get worse. They get better as you go down to a moderate draught. Three-fifths is about the best position. [907—783]
 - Q. That is where your tank—
- A. (Intg.) Take a vessel 10 feet wide and drawing about $4\frac{1}{2}$ feet of water, that is about the best proportion for that width, for the least resistance.
 - Q. That is better than wider or narrower?
- A. Better than wider or narrower; slightly, but not very much.
- Q. I have not been able to make my question clear to you, but I don't believe it is of sufficient relevancy to make any difference. Suppose the steamer "Beaver" is proceeding through the water at the rate of 12 knots an hour; her engines are stopped and put full speed astern, the helm put hard aport, and the full strength of the engines going astern, say of 4,000 horse-power—
 - A. (Intg.) Let me correct you there; you could

not get 4,000 horse-power at the start, or the half of it.

Q. How long would it take to develop it?

A. You would be nearly stopped before it was fully developed.

Q. How long would it take to develop it? At what rate would it develop?

A. I cannot answer that right off. That is a very intricate thing to figure out. I can figure it approximately. If you have a large wheel and you stop her at 12 knots you probably for a few seconds will not be able to turn your engine over at all and she is developing no power; then gradually the engine will begin to speed up and as it speeds up it develops the power.

Q. Suppose the link is thrown up from full speed ahead to full speed astern without stopping.

A. It would make no difference.

Q. The difference would be in revolutions, would it not? [908—784]

A. It would be in revolutions, yes. Revolutions are everything. If there are no revolutions there is no power.

Q. Suppose the engines show at the end of a half minute 70 revolutions going astern.

A. At the end of a half minute?

Q. Yes, suppose that were the case.

A. Well, quite possible; I think it is within the bounds of possibility, I am not sure.

Q. And the vessel ran for a minute and a half altogether from the time the reversing signal was

(Testimony of James Dickie.) given, how much would you say her head would swing under those conditions?

A. I don't know. I have only got one bundle of testimony that I plotted down and that had nothing to do with over 10 knots in speed. What happened between 10 and 12 knots I don't know.

Q. It had nothing to do with any ship that had the horse-power indicated, did it?

A. That ship that I refer to that was plotted, had not the horse-power.

Q. You have never plotted any with horse-power of this amount?

A. No, not of this, but I have had them greater and less. Are you after stopping or after steering just now?

Q. I am now after steering.

A. Well, the rudder has very little directive force when the vessel is going astern.

Q. That is taken up by some other place, is it not?

A. It depends upon the shape of the rudder and the shape of the propeller and upon the pitch of the propeller and a thousand and one other conditions.

Q. The directive force of the rudder, while the vessel is still going ahead, is consumed by forces developed by the propeller?

A. Yes.

Q. The resultant of those forces may be to throw the head of the vessel to one side or the other?

A. Yes. I would like to show you this diagram that I plotted here. [909—785]

Q. Wait just a moment and I will take that up

San Francisco & Portland Steamship Co. 1071

(Testimony of James Dickie.)

later. Have you ever made any experiments of this kind yourself?

A. No, I don't know of a case where it has been

done on this coast.

Q. You don't know of it? A. No.

Q. You have not heard of any being recently

done, have you? A. No.

Q. What would you say would be the maximum that the "Beaver" would turn in points in a minute and a half? A. I don't know.

Q. Would you say that three points would be too

much? A. I would not say anything.

Q. You would not question three points if it was suggested to you, would you, as a possible turn of the vessel?

A. It might be one way, it might be to starboard

or to port, I would not say which one.

- Q. I am talking as to the degree, as to the amount, and not as to the direction. Presuming that the resultant of these forces is to starboard, would a swing of three points in a minute seem to you an excessive amount for it to swing?

 A. I don't know.
 - Q. You don't know? A. I don't know.
- Q. You would not question three points if it were suggested to you as a possible swing in that time?

A. I would investigate.

Q. You would investigate? A. Yes.

Q. But from your present knowledge you would not question that, would you?

A. I would question everything.

Q. From your present knowledge would you

hazard the suggestion that it was unreasonable?

- A. I tell you that I don't know; I can't give you any more. [910—786]
- Q. You don't know. There is nothing in the study you have made of this thing—
- A. Yes, there is a study from 10 knots downward that I could answer pretty positively what would happen—from 10 knots downward, and with a right hand wheel.
 - Q. But going at 12 knots you would not say?
 - A. I don't know.
- Q. As the result of the calculations you have made from 10 knots down—
 - A. (Intg.) Not calculations.
- Q. As a result of the knowledge you have gained from examining these vessels going at the rate of 10 knots downward, what would be your impression?
 - A. I would not have any.
- Q. You would not have any; in other words, it does not illumine your mind at all?
 - A. Not a particle, from 10 to 12 knots.
- Q. She might swing 3 and she might swing even 4 points in a minute and yet there is nothing in your calculations on this question that would lead you to doubt that?
- A. I am pretty positive what would happen below 10 knots, but I am not positive above it.
- Q. I am not asking if you are positive; I am asking you what impression you gained—
- A. I don't start out with impressions. I start out trying to clear my mind of all impressions I have.

I want to be positive.

Q. I am asking you to clear your mind of all impressions you have. A. I have not got any.

Q. You don't expect the Court to believe that, Mr.

Dickie, do you? A. Yes.

Q. I am not saying that flippantly at all but I don't think [911—787] you are describing your own condition of mind.

A. I am describing my own condition of mind exactly.

Q. If a man comes in and states to you a certain proposition of the speed of a vessel through the water, and you never computed that at all, never computed the exact conditions he describes, you don't have any opinion as to the reasonableness or the sanity or the credibility of his statement.

A. Not unless he is very wild. For instance, if you tell me the "Beaver" made a speed of 25 knots I would say you were talking through your hat.

Q. You would not say that the statement that she swung three points is very wild?

A. I don't know.

Q. You would not consider that very much, would you?

A. 3 points is quite a chunk, it is quite a piece.

Q. Do you think that is a very wild statement?

A. I don't know.

Q. Then it is not a statement that would impress you as being very wild?

A. It is a statement I have not given any thought to, and I would not express an opinion until I had.

- Q. Then it is not a statement that would impress vou at first blush as being very wild?
- A. I don't know. If anybody said that to me I would take the statement and write it down and then investigate it and then I would come to a conclusion whether he was right or wrong.
- Q. All the years of experience you have had do not help you to determine whether or not your impression of that would be that it was a wild statement?
 - A. No.
- Q. Now, suppose I were to tell you that the "Beaver" under those conditions would actually swing 5 points in a minute and [912—788] a half, would that strike you as a wild statement?
 - A. I don't know I say.
- Q. You have been studying this question with your son, have you not?
 - A. No, he has been studying it with me.
- Q. Your son has been; as far as his experience in that line is concerned, has been in your office and under your direction?
 - A. He has been doing the mathematical part.
- Q. He has called upon your experience and your knowledge in these things in making up his mind?
 - A. No, he makes up his mind without me.
- Q. I say, in making up his mind he calls upon you for the advantage of your experience and knowledge? A. He tries to get the facts.
- Q. I am not questioning that but he naturally turns to you for advice?
 - A. No, he does not. He would question a state-

ment that I would make to him the same as he would question any that you would make, just the same.

- Q. Oh, no, I think not. I will not admit that.
- A. He would, exactly.
- Q. Mr. Dickie, have you found Mr. Heynemann's blue-print yet?

A. No, I have not found it.

Mr. DENMAN.—Mr. McClanahan, have you that blue-print?

Mr. McCLANAHAN.—I think it is in my office.

I will go and see if I can find it.

Mr. DENMAN.—Q. I hand you a diagram, Libelants' Exhibit 16. That is what you referred to just now as being all you know?

- A. Yes, all I plotted. That was the direction the ship took when she was backing. That was the time she took to back. It is all laid out to scale. These little circles are the spots taken from the Captain's testimony. [913—789]
- Q. I believe you testified the other day you did not know what horse-power this vessel had.
 - A. Which vessel.
 - Q. This vessel you are referring to on the exhibit.
 - A. Yes.
 - Q. You said you didn't know?
 - A. I don't know.
 - Q. And you don't know?
 - A. I didn't know; but from data I can always find the horse-power if I get the displacement. And I can get the displacement very easily. For instance, on the "Selja"—and without any question from the

Captain at all— I was within 40 tons of the displacement of the "Selja" when he told me her draught of water.

- Q. What was the horse-power of this vessel?
- A. I don't remember. I cannot keep these things in my head. The horse-power I got for the "Beaver" was a long way nearer than the facts—the supposed facts.
 - Q. A long way nearer what? A. The truth.
- Q. By the supposed facts you mean in these theoretical questions that were given you?
- A. No. For instance, you gave on the trial trip 17.6 knots. It should have been 17.06. But she did not make it. She made it with the tide. The data says so.
 - Q. With the tide with her or against her?
- A. With the tide with her; between two land points.
- Q. When she made 17.06, then she had the tide with her?
- A. Yes. She never made 17.06 through the water. I mean to say, the data calls for 17.6.
- Q. Have you been able to determine how much the tide did affect her?
- A. Well, reading from her data, when she turned around the other way she did not make such good time going back.
 - Q. Do you know when the tide turned on that day?
 - A. No. [914—790]
 - Q. Did you ever know? A. No.
 - Q. Do you know anything about the relative forces

of water in that bay at different times? A. No.

Q. The mere knowing of whether the tide was rising or falling, does not determine tidal currents and eddies, does it? A. No, sir.

Q. What do you mean by saying no nearer to the

truth; what do you mean by that?

A. Because 17.6 is above what anything goes with that power, of the character of the "Beaver."

Q. And you knew that, did you, at the time that these theoretical questions were put?

A. I did not know that until I investigated it.

Q. You say it is above what would be made by vessels of that type? A. Yes.

Q. You knew that before you began this investiga-

tion, did you not?

A. No. I only investigated that along with other things.

Q. Then all these theoretical questions are based

on erroneous data?

A. They are not; they are based on correct data,

Q. As I understand it, your questions are based on a trial trip—

A. Some of them are absolute, some of them are liable to error. Some of them are absolute; for instance, when you take the relative pitch of a vessel's wheel, and so forth, those are absolute.

Q. Yes, I know that, but the conditions here are not the exact truth as you have since discovered them—in some respects; that is correct, is it not?

A. That is correct.

Q. Can you tell from this diagram here, referring

to Mr. Heynemann's diagram, how much distance the "Selja" would cover if [915—791] she was going at the rate of 6 knots, her engines were stopped, and she dropped to 3 knots without any assistance at all, assuming trial trip conditions?

- A. No, I don't know the scale of that.
- Q. You don't know the scale of it?
- A. No, I don't know the scale of it.
- Q. It would not be of any assistance without the scale?
- A. It would not be of any assistance without the scale. I could read it if I had the scale. The scale is on it somewhere there, I think.
- Q. This seems to show what it would do in dropping from 6 knots to 3 knots with the assistance of—
 - A. (Intg.) With the assistance of 20 revolutions.
- Q. Now, I say from this can you compute what it would be without the 20 revolutions, in dropping from 6 knots to 3 knots?
 - A. No. You would have to begin again.
- Q. Coming back to the "Hankow" could you say that she had 2,000 horse-power?
- A. I think it was about 2,000 or 2,200, or something like that.
- Q. She would be about half the horse-power of the "Beaver"?
 - A. Half the horse-power of the "Beaver."
- Q. It is fair to presume, is it not, that if the turning motion to one side or the other is affected by the propeller, that the more horse-power you have the more it will be affected—it is fair to presume

that, is it not? A. That is questionable.

- Q. You say it is questionable? A. Yes.
- Q. What do you mean by "questionable"?
- A. Well, I would not say so without investigating it. [916—792]
- Q. What would be your impression, what would you expect to find?
- A. I would not expect to find anything. When I start out to investigate anything I sweep everything out of my mind.
- Q. Now, I am asking you not to sweep anything out of your mind but to use all the scientific insight you have, would you expect to find that the vessel would swing more the more the horse-power?
- A. I would expect a vessel to steer better; a finer vessel would be more under command than a full vessel.
- Q. I am taking the same vessel, the same draught, the same speed conditions at starting, the same condition of water and air; in one case you apply half your horse-power to a right hand wheel and in the other all your horse-power to a right hand wheel; looking at that question with the full power of your scientific attainments, and—
- A. (Intg.) Going ahead I should say that the vessel with more power would steer quicker. There is no question about it going ahead. But going astern I don't know.
- Q. If the reversing motion of the propeller throws her head say half a point to starboard with one-half the power of the engines exerted going astern, the

vessel still having a forward motion, would you expect that her head would be thrown more or less if the full power were exerted going astern?

- A. I don't know.
- Q. I am not asking you what you know; I am asking you what you would expect, applying your scientific attainments and the power of insight which you have gained from the experience you have had?
 - A. I would not know what to expect until I got it.
 - Q. You would not know what to expect?
- A. No, sir, not in that line, because looking at that diagram [917—793] see how lazy that leaves your mind, with a right-hand wheel one way—you see these are both right-hand wheels. She starts immediately on this curve and swings over on this circle, or if she does not she keeps on going for quite a little while in her second position, the rudder being hard over in both cases (indicating on map).
- Q. Then the science on this subject has not been developed sufficiently for you to have any rational expectation? A. Each ship is different.
 - Q. Each ship is different? A. Yes.
- Q. And there may be a tremendous difference in ships?
- A. Although all five I investigated had the same tendency that way; some had twice as much, some three times as much.
- Q. Then you have produced the one that had the least tendency to curve?
- A. No, sir, I took the one with the most spots so that I could have a curve.

Q. And there were some that had twice as much tendency? A. Yes.

Q. And some three times?

A. Well, at least two and one-half times.

Q. And you can produce those here? A. Yes.

Q. But you did not?

A. No, I did not, and I will tell you why I did not produce them; there were only two spots given and I could not make a curve with two spots. This was the only fellow who took his observations every 15 seconds. The other fellows did not.

Q. Let me get back to the main question and show you what the question was about. This was the question:

"Q. If the 'Beaver' is making 13.572 knots per hour through the water, and without reducing speed changes her helm [918—794] to starboard, and after her head under the starboard helm has swung one-half point to port her engines are then put full speed astern, and then her helm is put hard-a-port, would the vessel under these maneuvers be swinging rapidly to starboard at the end of one minute or one minute and a half, after her helm had been put hard-a-port'"?

And you answered to that:

"A. No, sir." In cross-examining you on that question I asked you to produce the data on which you based your answer and you produced this plot here showing a very much less rate of turning.

A. I don't know whether it shows less or more.

- Q. Didn't you say there were others showing 2½ times?
- A. Yes, others, but others that I did not plot because I did not have enough data to plot them with.
- Q. But they showed that they turned at a very much greater rate? A. Yes.
 - Q. Much more rapidly?
- A. Yes, but they were lighter vessels and smaller vessels than this one here.
- Q. The "Beaver" is a very much lighter draught vessel than the "Hankow"?
- A. Yes, lighter draught but not very far from the length.
- Q. As a matter of fact, do you know what the "Beaver" drew on that day?
- A. About 17 or 18 feet, was it not? I don't remember now.
- Q. Do you know what this vessel drew on that day?
- A. Is it not marked there? My recollection is about 23 feet or 24 feet.
 - Q. 23 or 24 feet?
- A. That is my recollection. I will not be positive. [919—795]
- Q. 24 feet 6 inches and 23 feet 6 inches. And the other one was what?
- A. About 18 or 19 feet, or 17. I don't remember what it was. You have it there.
- Q. The draught was 16 feet—the mean draught was 16 feet, was it not?

San Francisco & Portland Steamship Co. 1083

(Testimony of James Dickie.)

A. Was it 16 feet 4 inches? There were some odd inches, I think.

- Q. In other words, in determining whether or not the "Beaver" would be turning rapidly to starboard at the end of one minute or a minute and a half, you had to use your scientific imagination, did you not? You never had plotted a ship exactly like the "Beaver" had you? A. No.
- Q. And you never used the "Beaver" herself under those circumstances? A. No.
- Q. How did you come to make this answer that she would not be swinging rapidly to starboard if you never permit yourself to hazard a scientific conjecture but always examine the problem and solve it before you let your mind come to any conclusion?
- A. Because this one shows very plainly that they go opposite from what you would expect from the rudder, and shows it very distinctly. I am basing it on that.
- Q. But will your refusal to give a judgment or an estimate in other cases which I have asked you because you never permit your mind to come to a conclusion unless you solve the problem, how could you say that if the "Beaver" when her draught was only two-thirds this—
- A. (Intg.) Excuse me for interrupting you but you asked me if I could determine the quantity. That is only determining the direction, not the quantity.
- Q. In other words, you exercised your scientific imagination for your counsel on questions of direc-

(Testimony of James Dickie.) tion but not quantity—is that it? [920—796]

- A. Direction but not in quantity.
- Q. How did you come to the conclusion that she would not be swinging rapidly?
- A. Because she would have an impetus the one way to start with which would bring her down to about the 10 knots, would continue down to 10 knots and then I was pretty sure from 10 knots down what was going to happen.
- Q. Didn't you just say you could not estimate above the 10 knot astern?
- A. Neither could I with the vessel going astern, but the vessel was going ahead; the rudder was in the opposite direction.
- Q. You can exercise your scientific imagination when the vessel is going one way, but not the other?
- A. Yes. In fact, the rudder has very little directive force, going astern. Going ahead it always has a directive force, unless the ship is very extremely badly shaped.
- Q. Was this question put to you based upon the power of the rudder alone? Is that what you referred to when you said "swinging rapidly"?
 - A. I took the question just as it was put to me.
 - Q. I will put it to you:
 - "Q. If the 'Beaver' is making 13.572 knots per hour through the water, and without reducing speed changes her helm to starboard, and after her head under the starboard helm has swung one-half point to port her engines are then put full speed astern, and then her helm is

San Francisco & Portland Steamship Co. 1085
(Testimony of James Dickie.)

put hard-a-port, would the vessel under these maneuvers be swinging rapidly to starboard at the end of one minute, or one minute and a half, after her helm had been put hard-a-port?"

Your answer then had reference to the force of her helm, did it not? A. Yes. [921—797]

- Q. You were not testifying, then, in regard to the effect of her right-hand propeller in throwing her head?
- A. No, because she had a right-hand propeller—I found that out.
- Q. Did you know it when you answered the question?
 - A. I did know it when I answered the question.
- Q. When you said she would not be swinging rapidly to port, were you testifying with reference to the power that a propeller might exercise or only with regard to the helm?
- A. To the influence of the propeller and the helm also, both of them.
 - Q. Both of them? A. Yes, sir.
- Q. What do you mean by "rapidly"? Would you say under these circumstances if she swung 3 points, that that would be rapidly?
 - A. In how long a time?
 - Q. In a minute.
 - A. I would say that that was fairly rapid.
- Q. So that when you answered this question, you did have an opinion that she would not be swinging three points?
 - A. I knew what the rudder would do, in the first

part of the question, that is, when the rudder was put hard to starboard, I think it was—I don't remember just what it was—I knew what that would do exactly. Then I knew it would take some time to expend that force which was already put in before the force should begin to swing the other way.

- Q. Well, now, let me ask you again, you did have an opinion as to whether or not at the end of a minute, under the conditions described in this question, she would swing three points to starboard, did you?
- A. That she was going to swing in the opposite direction. That was my idea. She was not going to swing to starboard at all. [922—798]
 - Q. It was your idea she would be swinging to port?
 - A. Yes.
 - Q. And that is your opinion at the present time?
 - A. That is my opinion at the present time.
- Q. Now, suppose you were to discover, Mr. Dickie, that instead of that being the fact, she did in a minute and a half actually swing—under trial trip conditions—between 3 and 4 points; would that seem to you a wild result?
- Mr. McCLANAHAN.—You mean swing to star-board, don't you?

Mr. DENMAN.—Yes, swing to starboard.

- A. Yes.
- Q. That would seem wild to you? A. Yes.
- Q. Have you had experience enough in this line to make you feel confident?
- A. I have had a good deal of experience in the steering line but not much in backing. In going

ahead I have had a good deal of experience.

- Q. Have you had enough experience in the backing line to make you certain in your own mind—of course, you never have done this actual thing, have you?
 - A. No.
- Q. You would have to exercise your scientific imagination?
 - A. Imagination or knowledge or investigation.
- Q. You cannot approach this question by sweeping everything out of your mind because then you would not have anything; you have to apply your prior acquired knowledge to this problem?
- A. When the problem comes up you go and hunt for the information.
- Q. You never had any information giving you this actual problem, did you?
 - A. No, but I hunted for similar cases.
- Q. I thought you said you could not move in your mind from one case to a similar case? [923—799]
 - A. You can move to a similar case; everybody can.
- Q. I am glad to hear that. If you read your testimony you will find that you said you could not.
 - A. You won't find that I said that.
- Q. I won't find those exact words, but I will find answer after answer where you said that you never permitted yourself to give an answer on mere data, on mere theory. A. I did not say so.
 - Q. I admit you did not use those exact words.
 - A. You change my language.
 - Q. That may be, but the meaning is the same.

- A. No the meaning is not the same.
- Q. I think you will find, when you examine the record, that it will bear that construction.
 - A. No, it will not bear that construction.

(A recess was here taken until 2 P. M.) [924—800]

AFTERNOON SESSION.

JAMES DICKIE, further cross-examination, resumed:

Mr. DENMAN.—Q. Mr. Dickie, we were on the question of how much she would swing in a minute, presuming she was going ahead at the rate of 12 knots, and her engines were sent full speed astern; the question being how much she would swing to starboard under those circumstances. Your answer was you did not care to hazard any estimate as to how much she would swing, and I suppose you would want to give the same answer if she was going 13 knots?

- A. Yes.
- Q. Suppose a vessel were moving along at the rate of 13.572 knots and without reducing speed changes her helm to starboard, and after her head is under the starboard helm she is swung half a point to port; supposing that condition, her helm is put hard-a-port, how long would it take her to correct the swing?
- A. She would never correct the swing I don't think.
- Q. I am presuming now she is not going astern at all. A. Yes, I know what you mean.
 - Q. Will you explain that answer?
 - A. Yes. Give me the diagram again of the "Han-

kow" and I think I can explain it and make it intelligent. The vessel was aport helm; that vessels turns to port; now, the "Beaver" will do the same thing when she is backing, from 10 knots down.

- Q. Suppose a vessel is going ahead at 13.572 knots through the water and her helm is put to starboard but not hard over?
 - A. That is a very indefinite thing.
- Q. Well, that is all you have. That is what you had here, and then— [925—801]

Mr. McCLANAHAN.—He had more than that.

- Mr. DENMAN.—Q. You say it is a very indefinite thing? A. Yes.
- Q. For instance, the harder you put it over the more rapidly she will swing? A. Yes.
- Q. But when you answered this question you didn't know how far it was put over to starboard, did you?
 - A. I understood it was put hard over.
 - Q. You did? A. Yes.
- Q. That would materially affect your answer, would it not?
 - A. Yes; she would not get as much of a kick.
 - Q. What do you mean by "as much of a kick"?
- A. There would not be as much power put into the vessel turning to swing her as if she was put hard over.
- Q. So the answer to the question as to how much the "Beaver" would turn her head is dependent then, so far as your answer is concerned, upon the supposition that the helm was put hard over the first time?

- A. Yes, but you gave a qualifying element in that question, you said the ship swung, showing the force was in there.
- Q. I am presuming she would swing. But if the helm was hard over she would swing faster than she would otherwise? A. Yes.
- Q. If you put the helm very little over, and it took a longer time to get the half point, she would have less of a swing to her when she reached the half point, would she not?
- A. A little less, yes; not if she swung half a point—half a point, or whatever you said she swung.
- Q. But when she swung half a point she still had the swinging [926—802] motion in her?
- A. She still had the swinging motion in her. There is no question about that.
- Q. If that half point is reached rapidly under a hard over helm, the swinging at the end when she has reached a half point will be more rapid? A. Yes.
- Q. So that your answer to this question was based on the theory that when she reached her half over point, a half point over, she was swinging rapidly as the result of a hard-a-starboard helm.
- A. Yes; put it that she was swinging—leave the "rapidly" out just now.
 - Q. Suppose she was swinging just rapidly?
 - A. There would be a little less directive force.
- Q. And, of course, your answer as to whether or not she would be swinging rapidly to starboard at the end of the maneuver that is described here, is dependent upon the rate she had when she ended her

(Testimony of James Dickie.) swing a half point to port?

- A. No, only part way because the helm put aport has the tendency to swing her to port when she is backing from 10 knots down. Get that into your head firmly.
- Q. I thought you said you could not apply any of the tendency from 10 knots down to this situation?
- A. I did not say that. I said you could apply that from 10 knots down.
- Q. To a vessel going at the rate this was going? You told me distinctly Mr. Dickie—
- A. (Intg.) I told you between 10 and 12 knots I could not apply it, that I did not know what would happen in that particular place. From 10 knots down I was positive.
 - Q. You are positive, are you?
 - A. Yes, I am postitve. [927—803]
- Q. Have you ever made the calculation on a vessel the proportions of the "Beaver"?
- A. The proportions of the "Beaver" would not make any difference. I have looked up some steering trials which are in this book of White's and he says the same thing.
- Q. We will examine those later on. Now, let me ask you the question again: having gotten the vessel over half a point on your starboard helm, half a point to port that would be, the vessel being hard-a-starboard; suppose your helm is put hard-a-port without the propeller reversing—just going ahead, how long would it take her to correct the swinging motion to port?

- A. I could not answer that exactly. I know that she would correct it before very long, but I don't know just how long it would be in seconds.
- Q. Would it be about the same that it took to get over? A. No, it would be a little longer.
 - Q. Why would it be a little longer?
- A. Because she had a directive force she had to overcome.
 - Q. That is all you have to overcome, is it not?
 - A. Yes, but you have it going in one direction.
- Q. How long would it take to correct the directive force?
- A. It would take a little time, I don't know how long.
- Q. It would not take as long as it did to swing the whole half point, would it?
- A. I don't think it would, not with a vessel of the "Beaver's" type.
- Q. So that that correction arising from the shifting of the helm from hard-a-port to hard-a-starboard would take place in much less time than the whole time consumed in going over to the half point? The mere correction in the swinging would take [928—804] much less time than the whole time occupied in the swinging over of the half point?
- A. Yes, it would take a little less time; some appreciably less time.
- Q. So at the end of that time she would be going straight ahead in the water; that is correct, is it not —straight ahead in the water? A. Yes.
- Q. I am not speaking with reference to her former course. A. I understand.

Q. From that time following the conditions would be exactly like the theoretical question you did not want to answer, would they not?

A. No, because I don't know exactly what speed she would be going at at that time.

Q. Presume now that—

A. (Intg.) I have told you repeatedly—

Q. (Intg.) One moment, Mr. Dickie-

A. (Intg.) Let me get done first. I have told you repeatedly I don't know what would happen, whether the starboard helm was put to starboard or put to port backing between 10 and 12 knots; but below 10 knots I am pretty positive on what would happen because I have five vessels and they all went the same way and some of them were of the "Beaver" type—not the size of the "Beaver" but the "Beaver" type—one of them was a yacht—a sharp yacht, not as large, she was only about 180 feet long.

Q. We will go into all that later on.

A. The tendency was all in this direction.

Q. In what direction?

A. The direction on this sheet here.

Q. What do you mean by that? [929—805]

A. I mean that the vessel backing with her a-port helm, her head goes to port—from 10 knots down, with a right-handed wheel, if the rudder and everything are normal about the ship. If the rudder is bigger below it will be changed a little bit, and if it is bigger above the center it will be changed a little bit. But I know about the "Beaver's" rudder. Remember, when this vessel was going over these

(Testimony of James Dickie.) courses, she had the rudder just as indicated there.

- Q. Did you see it yourself?
- A. No, but that is the testimony.
- Q. Whose testimony is that?
- A. The testimony published before the British Association. And there was only one error in the testimony, where he had west substituted for east.
- Q. Well, that would make quite a difference in the result, would it not?

A. No, it didn't make any difference because it had not been plotted. All these spots came in fair except that one spot. If you go to the Berkeley Library you will find that that is so.

Mr. McCLANAHAN.—The witness is referring to Libelants' Exhibit 16.

Mr. DENMAN.—Q. And you are positive about that, are you?

- A. I am positive about that. This was done by the British scientists. The committee said the evidence was conclusive. It was against the theory which had been held up to that time.
 - Q. How did they say this—in what way?
 - A. They said they were thoroughly satisfied.
 - Q. Who do you mean by "they"?
- A. The committee. I don't remember the names of them. I can get the names of them. [930—806]
- Q. How did that finally affect the scientific body you are speaking of ?
 - A. Well, they believed their statement.
 - Q. How do you know that?
 - A. Because they did not contradict it. In these

societies they are very quick about contradicting—remarkably quick.

- Q. In other words, the whole organization of engineers very much resembles its component parts.
- A. Very much. Before the discussion is through you will get the truth pretty well threshed out.
- Q. I don't doubt that, Mr. Dickie, I don't question it. Now, as I understand it, you said that when the vessel is correcting her swing to port by her harda-port helm, and is going straight ahead at the speed of 13.572 knots, and her propeller is put full speed astern, that you don't care to state how much she would swing? A. No.
- Q. And, as I understand it, you would not say that a swing of three points was anything that your scientific mind would be shocked at?
 - A. I don't know how much she would swing.
- Q. Well, you remember the questioning this morning; your answers are the same now as they were then as to that situation?

 A. Just the same.
- Q. Nothing you have thought of during this noon would change your opinion in that regard?
- A. No. If you ask the broad question of direction then my answer remains just exactly as it was, the direction of the swing; if you talk quantity of swing I don't know because the five vessels all varied. There was no variation in direction but there was variation in quantity,—a large variation. I would have plotted the whole five if there had been enough data. Most [931—807] of them had only two points and you cannot plot on two points. This was

the only one who had taken his observations—I think it was every 10 or 15 seconds. He was the only one of an observant nature and was the only one that had all the data you could use. It is very, very seldom that data can be used completely. This was the most complete data I had ever seen.

Q. You have never tried this thing out yourself, have you, on any vessel?

A. No, sir. I have tried the steering qualities but not the backing.

Redirect Examination.

Mr. McCLANAHAN.—Q. Mr. Dickie, what would be the direction of the swing, as distinguished from the quantity of the swing, under the starboard question, that is, where your wheel is put hard-to-port after it has first been put to starboard and the engines reversed?

A. I don't exactly catch that.

Q. Well, the "Beaver" now has her wheel put to starboard and she swings half a point to port; then her wheel is put hard to port and her engines are reversed, and she is making at the time just prior to the reversing of the engines 13.572 knots; what would be the direction of the swing—to port or to starboard? A. To port.

Q. Not to starboard?

A. Not to starboard. From 13 knots to 10 knots I am not sure but I think and I feel pretty sure—but not dead sure—that she would swing with her helm ahead, that she would get a kick with her helm ahead and it would be enough to keep her from swinging the other way until the port helm caught her.

Q. In this swinging question which Mr. Denman has been examining [932—808] you on, you said that your understanding of the question was that it referred to a hard over starboard helm? A. Yes.

- Q. Now, as a matter of fact, the question simply says that the helm is put to starboard, and under that starboard helm she swings half a point to port. That is the question. A. Yes.
- Q. Now, would your answer to the question be affected by that new understanding of the question?
 - A. Slightly, but very little.
 - Q. Would your answer still be no?
 - A. It would still be no; positively no.
 - Q. How many vessels have you launched yourself?
 - A. About 130 or 140.
- Q. And did you take data of the time that these vessels would stop in the launching operations?
 - A. On several of them, on six or seven of them.
 - Q. Have you got that data with you?
 - A. I have.
- Q. It is open to the inspection of counsel for the respondent, is it? A. Yes.
- Q. Mr. Dickie, with the "Selja" making 3 knots per hour, and while making 3 knots per hour her engines are stopped, would it be possible for the "Selja" to come to a standstill or to come at rest in the water in three minutes?
 - A. No; positively no.
- Q. You spoke of using the "Wisconsin" data with reference to this stopping of the "Selja"?

- A. I did.
- Q. You said that there was a difference in the speed and the displacement and the length of the "Wisconsin" from the "Selja"? A. Yes. [933—809]
- Q. Does that difference make any difference in the effectiveness of the "Wisconsin's" data as applied to the "Selja"?
- A. I took that into consideration in making up my time for the "Selja."
- Q. So that all that has been considered in your answer?
- A. It has all been considered. There is a difference in the displacement from 7,000 to 11,000 tons.
- Q. That has all been considered when you applied that data to the "Selja"? A. Yes.
- Q. You said you understood Mr. Heynemann's stoppage curves that appear on this blue-print?
 - A. Yes.
- Q. And I believe you characterized them as theoretical? A. Purely theoretical.
- Q. As distinguished from your testimony on the question of stoppage, which you said was practical?
 - A. Purely practical; almost purely practical.
 - Q. What do you mean by that?
- A. I mean that all I had to do was instead of taking into consideration the wetted surface and the stored up energy, and all that sort of thing, I took the two displacements of the vessels—the relative displacements—which is a simple matter, the "Wiscon-

sin" and the "Selja."

Q. The stoppage data for the "Wisconsin" was practical? A. It was practical.

Q. And you simply applied that to the "Selja"?

A. Yes. That was taken by the Government Engineers. But there is no man who can tell when a ship is stopped. So I would be inclined to take Mr. Heynemann's data in preference to my own for the time.

Q. Do you know how long it took the "Wisconsin" to stop under [934—810] this trial when she was going at 6 knots?

A. 20 minutes is my recollection.

Q. In Mr. Denman's examination of you you said that a large swell would affect the speed of a ship; you were not further cross-examined on that particular statement. What do you mean by that? To what extent would that effect the speed of a ship?

A. If you give me the height of the swell I think I could answer it pretty closely on the "Beaver" case.

Q. Let us get down to something practical. You know the North Channel? A. Yes.

Q. You have passed through it? A. Yes.

Q. Do you know what is called the Potato Patch?

A. Yes.

Q. Let us assume that the "Beaver" is passing through the North Channel at a speed of 15 knots per hour, that there is a swell breaking over the Potato Patch westerly, and she directs her course after she leaves the North Channel into this swell in a westerly direction; to what extent would that, in

(Testimony of James Dickie.)
your opinion, affect the 15-knot speed of the
"Beaver"?

A. I don't know because one thing has no connection with the other whatever. How much water is on the Potato Patch?

Captain KIDSTON.-4 fathoms.

The WITNESS.—That is 24 feet.

Mr. DENMAN.—And let me add this suggestion, it is breaking 4 breakers on the Potato Patch before it gets across into the North Channel.

A. That would not be a very big sea when it would break. I think about a 7-foot sea would break on the Potato Patch—6½ feet or 7 feet. I am talking of the sea in the North [935—811] Channel. I think about 6 or 7 feet would break on the Potato Patch.

Mr. McCLANAHAN.—Q. I am simply stating to you that it is breaking on the Potato Patch in order to give you some idea of the swell.

A. I am trying to get the height of the sea. I could figure it out but I could not figure it sitting here.

Q. Would such a swell affect the speed of the "Beaver" after she left the North Channel to the extent of retarding her speed 3 knots per hour?

A. No.

Q. You said there were certain sea conditions that would affect the speed of the "Beaver"?

A. Yes.

Q. What are those sea conditions?

A. A gale of wind, a heavy sea.

San Francisco & Portland Steamship Co. 1101 (Testimony of James Dickie.)

Q. By a heavy sea do you mean one accompanied with wind?

A. One accompanied with wind.

Q. Would a smooth swell affect the speed of the "Beaver" materially?

A. Slightly, but not much.

Q. Have you had any experience in that matter?

A. Yes.

Q. Please state what it is.

A. When I crossed on the "Siberia" we had wind. It was put at about 24 miles an hour, and we had, as near as I could measure it passing along the ship's side, about 7 feet 9 inches of sea. The stern was going up and down 24 feet and 3 inches, as near as I could measure it, and it was measured very closely, and the speed, according to the day's run, was only twenty-three one hundredths of a knot reduced from the day before and the day after.

Q. How was she headed with reference to this wind and sea?

A. I don't recollect now. I have the direction but I don't recollect it. [936—812]

Q. Was it a following sea?

A. No, I think it was a head sea.

Q. Have you ever had any experience on the Atlantic Ocean? A. Yes.

Q. Please state it.

A. I measured the "Majestic" one time. Her stem was going up and down 61 feet. She had an ordinary speed of 20 knots and she was reduced that day to 183/4 knots.

- Q. Was there any wind blowing?
- A. A gale wind, a heavy gale wind.
- Q. That was one and $\frac{3}{4}$ knots in the whole day's run?
- A. No, one knot and a quarter per hour average for the day. She was a pretty long ship—she was 560 feet.
- Q. Mr. Dickie, I understand that you have had practical experience and knowledge with reference to wave action, as well as book action.
 - A. I have studied the subject.
- Q. You have made experiments yourself, have you not? A. Slightly, yes.
- Q. What have you studied on the subject—what books?
- A. I have studied Froude partly, and papers read before the Society of Naval Architects, of which I am a member. I have studied White, and I have studied Byles.
 - Q. Have you any of those works with you?
 - A. I have White's works here with me.
 - Q. What White is that?
 - A. That is the British Naval Constructor.
 - Q. What is the work that you refer to?
 - A. On waves.
 - Q. That is not the name of the book, is it?
- A. No, it is "White's Naval Architecture," I think. A manual of naval architecture—by W. H. White.
- Q. Can you state whether that is a standard work, or not? [937—813]

- A. It is a standard work.
- Q. Does the statement of the author of that work confirm your statement with reference to the wave action?
 - A. Yes. May I read a paragraph?
- Q. Well, wait a moment, please. That work is here and is open to the inspection of the counsel, is it?
- A. Yes. It answers Mr. Denman's question very well about the waves on the cliff.
- Mr. DENMAN.—I don't want any better answer than your's, Mr. Dickie.
- Mr. McCLANAHAN.—Q. That was a head sea on the "Majestic," was it?
- A. A strong head sea and a gale of wind. We had a 65 or 70 mile breeze.

Further Recross-examination.

Mr. DENMAN.—Q. The "Majestic" is a twinscrew, is it not or is it triple?

- A. Twin; overlapping slightly.
- Q. What was her tonnage?
- A. Her displacement I think was about 13,000 tons—I think.
 - Q. And the "Siberia" was twin-screw?
 - A. The "Siberia" is twin-screw.
 - Q. What is her displacement?
- A. I think she is about 10,000—no, she must be more, she must be about 12,000 or 14,000.
 - Q. What is her length?
 - A. Her length, I think, is 560 feet.

- Q. The "Siberia's" displacement is about 27,000 tons, is it not? A. The "Siberia"?
 - Q. Yes. A. No.
 - Q. How much is it?
 - A. I don't think she is over 13,000 or 14,000.
- Q. That would not make any difference though, would it? [938—814]
 - A. It would make a little.
 - Q. It would make a good deal, would it not?
 - A. Yes, a good deal.
- Q. As a matter of fact, there is a point where when you increase the displacement of a vessel the swell and sea conditions have practically no effect on a vessel—that is true, is it not?
 - A. The larger the vessel the less effect it has.
- Q. I know, but there is a point where it makes a very slight difference?
- A. Very slight. The wind has more to do with it than the sea.
- Q. You said a 65-knot breeze, did you not? Both vessels are high out of the water?
- A. That breeze, I think, would take about threequarters of a knot off the "Lusitania."
 - Q. Three-quarters of a knot in a day's run?
- A. No, in an hour; between five-eighths and threequarters of a knot.
- Q. What would you say if the captain of the "Beaver" should state that he has gone into a sea and wind on this coast which has brought down the speed of the "Beaver" to 5 knots?
 - A. I would believe him.



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For the Ninth Circuit.

Appettes. (IN FOUR VOLUMES)

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"SELJA," on Behalf of Himself and the
Owners, Officers and Crew of Said Steamship,
Appellant,

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VOLUME IV. (Pages 1105 to 1482, Inclusive.)

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Q. And when the vessel was going under a 15-knot speed? A. I would believe him.

Q. You would believe him? A. Yes.

Q. And yet these other vessels facing a wind of 65 knots and a head sea would lose three-quarters of an knot an hour, or one of them—that is correct, is it not?

A. About a knot and a quarter an hour.

Q. That is correct, is it?

A. That is correct. But conditions are altogether different. If the "Beaver" was deeply [939—815] loaded she would not go down to 5 knots, unless the captain chose to bring her down. If he was afraid of getting the stuff washed off the decks and he stopped* his engines she would go down.

Q. And if she was light she would go down?

A. Yes.

Q. And the lighter she is the more likely she is to go down—that is true, is it? A. Yes.

Further Redirect Examination.

Mr. McCLANAHAN.—Q. You say that you would believe the captain of the "Beaver," Mr. Dickie, if he had made the statement that a wind and sea condition would reduce the speed of the "Beaver" from 15 to 10 knots?

Mr. DENMAN.--5 knots.

A. If the "Beaver" had been extremely light, I have been out on this coast myself when I think it would do it.

Mr. McCLANAHAN.-Q. That would depend on

^{*}Page 816, line 3, the witness Dickie contends that the word "stopped" should be "slowed."

(Testimony of James Dickie.)
the kind of sea and the amount of wind?

- A. If you get the wind strong enough and the sea big enough it will bring him down. If you give me the height of the sea I will give you probably about what he would come down.
- Mr. DENMAN.—Q. You never have experienced that exact thing?
- A. I have travelled a good deal and I have always observed and I have always kept a log.
- Q. But you never have been on the "Beaver" when she was going into exactly the kind of sea she had that day?
- A. I don't know what the sea was that day. They say it was calm, with a long swell.
 - Q. You know how high that swell was, don't you?
- A. No, I don't know how high it was. If you can tell me how [940—816] high it was I can tell you how long it was.
- Q. I don't doubt that. Now that that has been worked out it is a simple calculation.
- A. If you can tell me how long it was I can tell you how fast the swell was apparently going and I will tell you how much motion your pendulum had and I will tell you how hard it hit the cliff.
 - Q. Then you admit it might hit the cliff hard?
- A. Yes, but it did not hit the ship the same way. [941—817]

[Testimony of William W. Broaddus, for Claimant.] WILLIAM W. BROADDUS.

Mr. McCLANAHAN.—We will waive the administering of the oath to Mr. Broaddus.

San Francisco & Portland Steamship Co. 1107 (Testimony of William W. Broaddus.)

Mr. DENMAN.-Q. What is your occupation?

A. Freight clerk now on the steamship "State of California."

- Q. Were you on the "Beaver" at the time of the collision with the "Selja"? A. Yes, sir.
 - Q. Where were you just prior to the collision?
 - A. In my room, on the "Beaver."
- Q. Do you recollect whether you heard any whistles prior to the collision?
 - A. Yes, I heard one blast of a whistle.
 - Q. From another ship?
- A. From another ship, yes, sir. I heard one blast, followed shortly afterwards by three blasts from our own whistle; and then previous to that I heard our own whistle blowing.
- Q. What happened after you heard the three blasts from your whistle?
- A. I heard three blasts of the whistle and then I felt the screw beginning to go astern under me so I ran out on deck to see what was the trouble.
 - Q. Did you see the "Selja". A. I did, yes, sir.
- Q. Whereabouts was she when you saw her, what direction from you?
- A. I went over to the starboard side of the ship and looked forward and she appeared to be over about there.
- Q. What do you mean by "over about there"—on your starboard side? A. Yes, sir.
 - Q. Where was she lying when you saw her?
- A. She was lying right across our bow, at right angles.

(Testimony of William W. Broaddus.)

- Q. At right angles across your bow?
- A. Yes, right dead ahead. [942-818]
- Q. Where was she lying with reference to the sea?
- A. She looked to me to be about in the trough of the sea.
- Q. Do you recollect whether you heard the three whistle signal from her, or not?
- A. I don't know whether I did or not, I did not hear any before we blew three blasts. As to whether she blew any after that, I could not say.
 - Q. She might or she might not?
- A. She might or she might not; I did not hear them.
- Q. How long was it before the vessels came together?
- A. As near as I could judge time at that time it was fully a minute or more.
 - Q. That is, after you saw her? A. Yes.
 - Q. Did you notice the angle at which you struck?
 - A. I think her head had fallen away a little bit.
- Q. Did you notice the angle of impact between the two vessels? Do you recollect what that was?
 - A. No, sir, I do not.
 - Q. Where did you go after the collision?
- A. As soon as we struck, I had hold of the handrail, and as soon as the vessels came together I went forward to see what damage there was. I started up for the bridge, and the First Officer ordered all hands to lower away the boats, and I started to help lower away the boats and after the boats started over the

(Testimony of William W. Broaddus.) side I went up on the bridge to the captain to ask him if he wanted to send any messages ashore.

Q. Did you pay any particular attention to the course of the two vessels after that?

A. No, sir, I did not. I saw the "Selja" list—that is all, I saw her list over, and then I went from there to the engine-room and to my own room to send [943—819] a message that Captain Kidston gave me and when I came out again she was standing on her head.

Cross-examination.

Mr. McCLANAHAN.—Q. You were the wireless operator, on the "Beaver"?

A. Yes, I was operator and freight clerk.

Q. Where was your room situated?

A. My room was the last room aft on the ship.

Q. On what side?

A. Neither side; it was in the middle. There is a room on the starboard side, a room on the port side, and my room was in the middle of the deck-house aft right over the screw.

Q. Right over the screw?

A. Yes, it must have been, as near as any of them could be over the screw.

Q. Could you hear the screw working.

A. Yes, sir.

Q. From your room? A. Yes, sir.

Q. What were you doing in your room at the time? A. Making freight bills.

Q. And while there you could hear the screw working?

(Testimony of William W. Broaddus.)

- A. I could know when the screw was in motion, yes, sir.
 - Q. Did it make a noise?
- A. Well, not noise enough that I could not hear my wireless work when I was working that, but I could tell it was working, especially when the ship was going astern; there is more vibration then than when she is going ahead.
 - Q. How far is that from the bridge aft?
- A. Well, I don't know the exact number of feet. The bridge is a little forward of amidships on the "Beaver" and I was in the stern.
- Q. A couple of hundred feet aft, was it? [944—820]
- A. Well, I should judge it would be that far, I guess.
- Q. Which way did your door open, aft or to one side? A. It opened out.
 - Q. Aft? A. Yes, sir.
 - Q. It opened toward the stern of the ship?
 - A. Yes, sir.
- Q. And your window in the room opened that way also?
- A. My window went up and down, as I recollect it now.
- Q. But when you looked out of your window you looked aft over the stern of the ship?
 - A. Yes, sir.
- Q. There were no apertures on either side of the room? A. No.
- Q. Just the door and the window, which were both aft? A. Yes, sir.

San Francisco & Portland Steamship Co. 1111

(Testimony of William W. Broaddus.)

Q. You said that when you last saw the vessel she seemed to be in the trough of the sea?

A. To the best of my knowledge.

Q. How long did you keep your eye on her?

A. Well, I did not stand and watch her. I saw that we were going to strike her and I stood until we hit.

Q. But while you did watch her she was in the trough of the sea?

A. She looked to me to be that way.

Q. The swell that was on that day must have been a very long swell if she remained in the trough of the sea for any appreciable length of time?

A. I don't know anything about that. I was in my room working and I don't know what the swell of the sea was.

Q. You did not notice that at all?

A. No, sir. I cannot give anything exact as to that because I had lots to do after she struck.

Q. My thought is this: that if you saw her at one time in the [945—821] trough of the sea she must have at a later period arisen to the crest of the sea and she moved on; you did not see her do that?

A. I did not see her do that.

Q. While you looked at her she remained in the trough of the sea?

A. I looked at her and when we struck her I left.

Q. You did not see her at any time on the coast of the swell?

A. I could not swear as to that.

Q. Well, can you swear that you saw her in the trough of the sea?

(Testimony of William W. Broaddus.)

- A. I said she looked to me to be in the trough of the sea.
 - Q. There was not very much sea on, was there?
- A. There could not have been. If there was a sea there could not have been much sea on—there was no wind.
 - Q. How far did she appear to be from you?
 - A. You mean when I first saw her?
 - Q. Yes.
- A. Well, she was a good ship's length and a half or two.
 - Q. Was she going forward or astern?
- A. When I saw her she was going neither forward nor astern.
 - Q. You noticed that, did you?
- A. I noticed that. I called the attention of a passenger who was standing alongside of me on the deck, I said, "Why don't he go either forward or astern, he is not moving." He was not moving. His screw was not moving either fore or aft.
- Q. You recognize that if your ship was swinging at that time either to port or starboard your judgment as to whether the "Selja" was at rest would be faulty, would it not?
- A. I noticed in particular that her screw was not turning [946—822] either way. If her screw had been turning I would have noticed it.
- Q. And you noticed that her screw was not turning?
- A. There was no motion in the water and I called the attention of this passenger, I said, "Why don't

(Testimony of William W. Broaddus.) the damned fool go ahead or astern. Look at him, he is standing still."

Q. Did you see your boat swinging at that time,

or was she keeping her course?

A. Just before we struck her I don't think she was keeping her course; she had not headway enough.

Q. I am talking about the time when you first saw the "Selja," was she keeping her course then?

A. I don't know what course she was steering.

Q. Well, whatever it was, was she keeping it?

A. I could not say as to that, whether she was keeping her course, or not. She was naturally going ahead, but I could not judge.

Q. You could not judge whether she was swinging to port or to starboard, or whether she was keeping in a straight course when you first saw the "Selja"? A. No, sir.

Q. You did not take notice of that?

A. I did not take notice of that, no, sir.

Mr. DENMAN.—Q. You were the wireless operator on the ship? A. Yes, sir.

(An adjournment was thereupon taken until Friday, July 28, 1911, at 10 A. M.) [947—823]

Friday, July 28th, 1911.

[Testimony of James Dickie, for Claimant (Recalled—Cross-examination.).]

JAMES DICKIE recalled for further cross-examination:

Mr. DENMAN.—Q. Mr. Dickie, at the last examination, Mr. McClanahan referred to some exper-

iments that had been made in regard to the time it would take to stop ships being launched at the Union Iron Works; what is the launching distance there, the maximum distance?

A. The distance we stopped in, if my recollection serves me right, was 785 feet. It was a total motion of 785 feet; that is, the stem was 785 feet away from the position it started from when it stopped; and my recollection is it was 35 seconds from the maximum velocity—35 seconds to stop.

- Q. And in those launching operations the vessel carries a portion of the cradle with her, does she not? A. Yes.
 - Q. And she is also held back by ropes?
- A. Yes. But the cradle is so small that it is almost negligible.
- Q. And you also restrain the velocity by the use of ropes? A. yes.
- Q. The ropes break as you go along—is that the arrangement?
- A. Yes; you put them in such condition that it takes a long time for them to break. You make them long so as to get the time worked in. If you made them short they would break too quickly, they would go like fire crackers.
- Q. You were able to stop your biggest ship in 35 seconds?
- A. Yes, from the maximum velocity. That great big one—the "Olympia"—was 78 seconds; her speed would be probably about 13 knots. [948—824]

- Q. 13 knots. You mean when she started?
- A. No, at a maximum velocity.
- Q. At maximum velocity her speed is about 13 knots?
- A. Probably about that. I don't know. I did not see it.
- Q. But you had mechanical methods for arresting her speed so that you could stop her in about 68 seconds?
- A. Stop her in about 40 seconds, from her maximum velocity.
- Q. Those are the only experiments in stopping vessels that you yourself have observed, are they not?
- A. The ones I made myself are the only ones I have seen, further than records; there are only two people I know of who have taken the records,—Denny of Dumbarton and Harlem Wolf of Belfast, Ireland. Those are the only ones I have seen. The machine that we made is the only one of its kind that I know of. We lost it twice before we got one to operate right; it made a beautiful record, one of the prettiest records in the world.

Further Redirect Examination.

Mr. McCLANAHAN.—Q. Mr. Dickie, I think you said that if you knew the height of the swell into which the "Beaver" was going you could tell how much it would retard her speed; is that correct?

A. I could give you a very close approximation to it.

- Q. How high would the swell have to be in order to break on the Potato Patch, assuming that there are 24 feet of water there?

 A. About 4 feet.
- Q. What would a 4-foot swell retard the speed of the "Beaver"?
- A. Very little. I did not take 4 feet into cognizance; I took from 5 to 6 feet into cognizance, and that is about seven-eighths of a knot. [949—825]
- Q. That is, you did not take a 4-foot swell into consideration, but you did take a 5 or 6 foot swell into consideration?
- A. Yes, and I figured the stern going up about 18 feet.
 - Q. In a 5 or 6 foot swell? A. Yes.
 - Q. And the retardation would be what?
 - A. About $\frac{7}{8}$ of a knot.
- Q. Is that a liberal allowance or is that a close figure?
- A. That is a liberal allowance; it would be under it rather than over it.
- Q. What is the cause of that retardation—the swell itself?
- A. The swell itself is a small portion of it. The inefficiency of the propeller when it comes out is the largest portion,—the loss of horse-power due to that. I would like to mention here that it represents about 560 horse-power, the loss of $\frac{7}{8}$ of a knot in the speed of the "Beaver" at that speed.
- Q. You remember Mr. Denman asking you a question in which the experience of the captain of the "Beaver" was contained, where he said that from

15 knots the "Beaver" dropped to 5 knots?

A. Yes, sir.

Q. You remember that question, do you, and you said you would believe that? A. I believed it.

Q. Did the question contain the revolutions at which the "Beaver" was going at 15 knots?

A. No.

Q. Would there have been under such a dropping of the speed any change in the revolutions of the engines?

A. Most decidedly.

Q. Could the speed drop unless there had been a change in the revolutions of the engines? A. No.

Q. What would have been the situation if the speed did drop and the revolutions of the engines were not changed? [950—826]

A. I think the engine would go to pieces. Let me put that in another shape—if the steam was not shut off.

Q. If the steam was not shut off the engines would go to pieces?

A. The engines would go to pieces.

Q. So that when you assumed the feasibility of the proposition of the "Beaver" dropping from 15 to 5 knots, you assumed that there was some change in the power of the engines?

A. I assumed that the speed was let down to prevent the engine from running off.

Further Cross-examination.

Mr. DENMAN.—Q. Suppose the wave is 7 feet high, how fast does it travel?

A. I don't remember that.

- Q. Have you calculated it? When did you last calculate it?
- A. I just merely look at the book for these things; I don't keep them in my head. I just look at the book. I don't calculate them at all.
- Q. Does not the rapidity with which the wave moves determine the frequency with which the wheel would be exposed?
- A. No. The amount that is exposed, I took about 10 per cent of the total time exposure. That represents it. If the swell is long you are longer out, and if the swell is short you are a shorter time out, so it does not make any difference.
- Q. You mean to say you have calculated it and determined that the relationship is exactly the same, the longer the time the longer it is out, and the shorter the time the shorter it is out?
 - A. No, there is nothing exact about a sea.
 - Q. Why do you compute it at 10 per cent?
- A. You have to make certain assumptions; the first assumption is that the stern will go up and down about 18 feet; that is an assumption based upon evidence from other vessels. It is [951—827] an extreme assumption. It is more than she would actually do. I think if you put the captain on the stand he will say she was not going up and down 18 feet. But I have taken an extreme—you have to assume something.
- Q. Not if you are operating in the scientific way you described at the last session, you would take nothing as assumed but you would simply go ahead

on the data that is given you. I understand you are assuming and did assume in this question a certain rate of exposure? A. Yes, sir.

- Q. How much of the wheel would be exposed if it went up and down 18 feet?
- A. A little over half of it, at the extreme exposure.
- Q. How much of the time would the half of it be exposed?
- A. That would be just a fraction of the time, a very small fraction of the 10 per cent of the time. Ten per cent would represent about an average exposure of it, an average exposure of about a quarter of the wheel.
- Q. Ten per cent would be an average exposure of what?
- A. Of about a quarter of the distance; divide that again in two and you get 10 per cent.
- Q. Now, let me see; that would mean that every wave it would pass it would expose it that much?
- A. No, if the ship throws up and the wave passes, sometimes the wave passes and don't expose the wheel at all; the wave just happens to hit under the ship while the wheel is up. Sometimes the wave does not affect the wheel at all. Sometimes it will pass clear and it will be more exposed.
- Q. But it will everage about one for every passage of the wave?
- A. No, not for every passage of the wave; the ship has a certain period she pitches in and she won't pitch outside [952—828] of that period no matter

what the fact is; for instance, it is the same as rolling.

- Q. What was the period of pitch on the "Beaver" at that time? A. I don't remember it.
 - Q. You don't remember it—did you ever know it?
 - A. No, I just assumed it.
- Q. How do you come to assume a fact in this scientific investigation when you have not determined what the thing actually is?
- A. Because you must assume something. For instance, the 18 feet is assumed, the height of the sea is assumed. The whole thing is an assumption. If these things are so, then the other things are so; if they are not so, then the other is not so. The biggest factor in the thing is, that it takes 560 horse-power, which is a known thing, to make the difference—to account for the $\frac{7}{8}$ of a knot for that speed of the "Beaver"—about 15 knots.
- Q. What you did, then, was to assume it went $\frac{7}{8}$ of a knot and then found your horse-power?
 - A. No, found the horse-power first.
- Q. How are you going to determine the horsepower unless you know the height of the wave and the pitch?
- A. There is no trouble about the horse-power; the horse-power is a fixed thing due to certain speeds.
 - Q. I don't mean that, I mean the horse-power lost.
- A. You have to put these things down and interpolate them together.
- Q. Let me ask you again: the rate at which the wave travels will determine, of course, the number

of exposures the wheel will have, will it not?

- A. No. [953—829]
- Q. Will it have anything to do with the number of exposures?
 - A. It will have a little to do, but not much.
- Q. Won't it have a great deal to do with it? If it travels very fast will it not be exposed more often than if it travels slowly?
 - A. Then it will be exposed a shorter time.
 - Q. And if it is exposed a shorter time—
- A. (Intg.) I was wrong in that figure 560; it should be 650 horse-power for $\frac{7}{8}$ of a knot.
- Q. That is very easy to calculate, is it not? Anybody can calculate that? A. Yes.
- Q. Assuming that it was $\frac{7}{8}$ of a knot, it would be 650 horse-power? A. Yes, sir.
- Q. And if you take it the other way, if it were 650 horse-power, it would be 7/8 of a knot?
 - A. Yes.
- Q. The unknown thing is whether or not it was one or the other on that voyage?
- A. Well, I did not say that exactly, I said about $\frac{7}{8}$ of a knot; I have to make an assumption there. And as to that, when I say "about $\frac{7}{8}$ " I mean that it is about that, that that is as near as we can figure it; but when I say "650 horse-power" that is calculated, due to these conditions.
- Q. Suppose the wave is a very long wave, such a wave as would be produced by 15 feet of height; then suppose again that the waves were only 2 feet in height; of course, the 2-feet waves would pass more

frequently than the 15-feet waves? A. Yes.

- Q. But you say it would produce the identical effect on the propeller? A. I did not say that.
- Q. Well, practically the identical effect on a propeller? [954—830]

A. If there was the same amount of exposure it would be the same.

- Q. But there will not be the same amount of exposure, will there?
- A. If the ship is pitching at say an average of about 18 feet the exposure will be about the same.
- Q. Would she be pitching at an average of 18 feet if the wave was only 2 feet high?
 - A. No, not if it was only 2 feet high.
- Q. You said if the wave is smaller it will go faster and therefore the amount of exposure will be the same; now, I am asking you if it is 15 feet high in one case and 2 feet in the other would you have the same exposure of the propeller?
 - A. No, you would not have the same exposure.
- Q. Then it does vary very much according to the height of the wave?
 - A. Yes, it does vary very much.
- Q. And if you stated to the contrary of that in your testimony you want to have it corrected?
 - A. I don't understand what you mean.
- Q. I say if your testimony has been to the contrary of that you want to correct that testimony, don't you?
- A. Yes. I was assuming that the wave was 5 or 6 feet high and the ship made 18 feet pitch. And I

think I am taking an extreme wave for that day and I think I am taking the extreme pitch for that day.

Q. Were you there? A. No.

- Q. Then it is not correct to say that the rate at which the wave passes through the water has nothing to do with the amount of exposure?
 - A. I don't understand you.
- Q. Then it is not correct to say that the rate at which the wave passes through the water has nothing to do with the amount [955—831] of exposure of the wheel?

A. The vertical motion up and down is the largest factor in the thing.

Q. The number of times that the vessel will be exposed to that vertical motion up and down is dependent upon the rapidity with which the wave moves?

A. It depends upon the rapidity with which the

ship pitches.

- Q. If the ship were perfectly still and the wave passed by would she not still have her propeller exposed by the movement of the wave, without any pitching? A. Yes.
- Q. The rapidity with which the wave passes the ship has an effect on the amount of exposure, has it not—in 5 minutes?

A. On the time of exposure.

Q. Take a 5-minute period, and presuming that the wave is proceeding at one rate, and then presuming that the wave is proceeding at a lower rate than that, will not the wave proceeding at the higher rate (Testimony of James Dickie.)
expose the wheel more than the wave proceeding at
the lower rate?

A. It should not.

Q. Why not?

- A. Because if the wave is proceeding at the lower rate the time exposure will be longer than at the higher rate and it will just about balance itself.
- Q. So she would be no more affected by a wave 2 feet high than by—
 - A. (Intg.) I did not say that.
- Q. (Continuing.) One moment. Let me get through: Assuming that a vessel is not pitching, she would be no more affected by a wave 25 feet high than she would by a wave 15 feet high?
 - A. I did not say that or indicate that.
- Q. How do you acount for your statement that the amount which the propeller would be exposed would be just as much over [956—832] a certain period of time, presuming the vessel to be, not pitching whether the wave is 3 feet high or 15 feet high?
- Mr. McCLANAHAN.—I don't know what bearing it may have on the answer, but I don't think that he assumed that the vessel was not pitching.
- Mr. DENMAN.—You will find that in the former question.
 - A. I cannot understand that question.
- Q. We will presume that the vessel is not pitching at all—
- A. (Intg.) You are on a wrong premise to start with, if you are going to have waves.
- Q. I want to get at the various factors; I want to eliminate the pitching factor for the present. Pre-

sume she is not pitching; presume that the waves are 15 feet high, and that the vessel goes through them for 5 minutes at a certain speed of the vessel. Now, again, presume that the vessel is not pitching, that the waves are 2 feet high, that she goes through them at the same speed of the vessel; would the exposure of the propeller, so far as that exposure will reduce speed, be the same in both those cases?

A. I cannot conceive that question. I cannot conceive it. It won't fit into my mind. You will have to put it in another shape. It won't fit in.

Q. Now, frankly, Mr. Dickie, don't you know there are two factors? Haven't you to admit that there are two factors in retarding the ship, one of the factor produced by the pitching and the other factor produced by the movements of the wave even when she is not pitching? Suppose that the wave catches her and passes her propeller at a moment when she is not pitching, when she is on an even keel—not only on an even keel but that she is trimmed even—will there not be some exposure of the propeller? [957—833]

A. If the wave drops to the stern, yes, there will be an exposure.

- Q. That is, presuming she is horizontal to the ground? A. Yes.
 - Q. There will be an exposure? A. Yes.
 - Q. Now, can't you conceive of that continuing?
- A. No, I cannot conceive of that motion alone; it could not exist.
- Q. Well, conceive it for a moment; that is a factor that continues right along, is it not? A. No.

- Q. That is the norm from which the pitching raises or lowers the amount of exposure, is it not?
 - A. I do not understand the question.
- Q. I say that is the norm—the average—condition from which the pitching raises or lowers the amount of exposure?
 - A. I don't catch what you are driving at at all.
- Q. It is not what I am driving at, Mr. Dickie; this is not an argument, this is an examination.
- Mr. McCLANAHAN.—The witness does not understand the question.

The WITNESS.—Let me get it on paper and see if I understand it. (After making sketch.) That is what you mean, is it?

- Q. Suppose the vessel continues through the water without any pitching, that her wheel is just awash; she continues on that horizontal position without pitching, and a 2-foot wave comes along and exposes a little bit of the wheel?
 - A. A little bit of the wheel.
 - Q. But very often? A. Yes. [958—834]
- Q. A little bit of the tip of the wheel, and very often? A. Yes.
- Q. Then a 15-foot wave comes along and exposes the wheel very much more but not so often?

A. If it exposed the same amount of surface it would be the same.

Q. If it does-but does it?

A. If the multiple of the little one was equal to the multiple of the big one that would be practically the same thing.

- Q. It would be practically the same thing?
- A. Yes.
- Q. In other words, there is no such thing as a reduction at all by exposure of the wheel because if it is only exposed an inch that will come so often, or if the wave is only 6 inches in height that will make it so often that it will make the exposure just as bad as if the wave was 15 feet in height?
 - A. If it only came once an hour, yes.
 - Q. But will it come once an hour?
- A. Yes, if the multiples of the two things are the same, they will only come once an hour.
 - Q. Well, are they the same?
 - A. I say if they are the same.
 - Q. Well, do you believe they are the same?
 - A. I don't know. How can I tell?
- Q. Then you are not in a position to say that a small wave would retard the vessel just as much—
 - A. (Intg.) I never indicated that.
- Q. When you come to examine your testimony when it is written up you will find that there is no other conclusion to arrive at from what you said.
- A. You can arrive at another conclusion. You are talking about a different thing. I say [959—835] if the propeller is exposed 4 inches once a minute and 40 inches once in 40 minutes, the result would be practically the same.
 - Q. Do you mean 40 inches on the circumference?
 - A. No, I am talking of 40 square inches.
 - Q. Forty square inches?
 - A. Yes, you have to get it in square inches.

- Q. As you go down the radius of the propeller does it expose it in that same proportion?
 - A. We will take the disc area, if you want to.
 - Q. It is the disc area that counts, is it not?
- A. Yes, but you must get it into square inches. It must be got into square inches.
- Q. Six inches at the hub of the wheel would make a great deal more difference than 6 inches at the tip, would it not? Six inches vertically would make a great deal more difference than the amount of exposure of the wheel than 6 inches at the tip?
 - A. Do you mean 6 square inches?
 - Q. No, 6 inches vertical drop.
- A. Oh, that is a great deal different. I am talking of the quantity of the wheel that is exposed.
- Q. Were you talking about the height of a wave—3 feet and 15 feet—and the amount of wheel exposed by dropping her 15 feet as distinguished from a wave of 3 feet. That is what we have been talking about, Mr. Dickie, and nothing else. You said it would be the same?
- A. I said it would be the same if the multiple of the square inches is the same.
- Q. Then is it the same? You know it is not the same as you go down the radius?
- A. I know it is not, but if time exposures bring up the multiple of the small thing to the large [960—836] thing, then it would be exactly the same.
 - Q. Have you ever computed that?
 - A. That does not need any computation.
 - Q. Will it bring it up to the same?

- A. Practically; it will be very close to it.
- Q. Have you ever calculated that to see?
- A. I know it.
- Q. Have you ever calculated that to see?
- A. No, but I know it.
- Q. That is one of those scientific judgments you make? A. It is a scientific judgment.
- Q. Now, I have gotten where I want; you do not say then that on account of the increase of the rate of the 3-foot wave that it will at the end of 5 minutes retard the vessel just as much as the 15-foot wave, and that—
- A. (Intg.) I don't get at the meaning of your question.
 - Q. (Continuing.) I have not finished it yet.
 - A. Oh, go ahead.
- Q. (Continuing.) Just as much as the 15-foot wave, presuming the vessel is not pitching, and presuming she is going through the water at the same speed for the two heights of wave; do you get the question now? A. No.
 - Q. Read it to him, Mr. Reporter.

(Question read by the Reporter.)

- A. That question just seems to me to be a jumble of nonsense; I can't make head or tail of it.
- Q. Whenever a question comes to a conclusion that is adverse to your client I notice that it becomes objectionable to you.

Mr. McCLANAHAN.—Now, Mr. Denman, I object to that remark.

The WITNESS.—And I object to it. [961—837]

Mr. DENMAN.—Well, let me finish. The reason is that I have not had the chance of working this thing out with you, as your client has, and getting at the drift of your meaning. I have put these questions to you after I have had a series of preliminary questions as the matter appears to me. It seems that whenever I come to a point where I desire to summarize that I am not able to make it clear to you.

Mr. McCLANAHAN.—I object to this statement as entirely uncalled for. I don't believe there is a man present at this hearing who understands Mr. Denman's question. If there is I would like to have him speak up.

Mr. DENMAN.—I think Captain Lie does. He has followed every word of it.

Mr. McCLANAHAN.—Do you, Captain Lie? Captain LIE.—No, indeed, I do not.

Mr. McCLANAHAN.—Do you, Mr. Page?

Mr. PAGE.—Yes, of course I do.

The WITNESS.—Well, let him answer it.

Mr. DENMAN.—I will put the question to you again: Now, presuming that your vessel, in both the instances I am going to cite, is travelling at the same number of revolutions—

A. (Intg.) You are bringing revolutions in now; that was not in before.

Q. Well, I will put them in now.

Mr. McCLANAHAN.—He is going to clarify the question.

The WITNESS.—Oh, he is going to clarify the question. That is another element now.

San Francisco & Portland Steamship Co. 1131
(Testimony of James Dickie.)

Mr. DENMAN.—Q. Presume now, that the vessel is proceeding, in both the instances I am going to cite, at the same number [962—838] of revolutions of the propeller. I eliminate the factor of pitching. Presume that in the two instances the vessel proceeds for the same length of time. Presume that in the first instance the wave is 3 feet high and in the second instance that it is 15 feet high. Will the amount of retardation due to height of the wave be the same in both cases?

A. No; that is, do I understand you to mean will a 3-foot wave retard it the same as 15-foot wave?

- Q. Yes. A. No.
- Q. It took me a long time to get that far with you, Mr. Dickie.
 - A. That was not the question before at all.
 - Q. It came pretty near to it? A. It did not.
- Q. What is the ratio of those two—the 3 and the 15-foot?
- A. The direct ratio is 5, but not an area of the wheel.
- Q. What is the difference in the area of the wheel of the "Beaver"?
- A. I don't know; I have a rough method of figuring it: If you take the square of the diameter and take off one quarter, you will get the area pretty nearly.
 - Q. For the 15 feet? A. 17 feet.
- Q. Take a square of the diameter and take off a quarter.
 - A. I cannot figure the partial area—the eclipse; I

(Testimony of James Dickie.) cannot figure it without the book.

- Q. Have you ever figured it for the "Beaver"?
- A. I have figured it hundreds of times.
- Q. I say, have you ever figured it for the "Beaver," for the partial—what do you call it, what is the technical term there?
 - A. Part of the segment of the circle?
- Q. Yes; of the segment of the circle; have you ever figured it? [963—839] A. No, not directly.
- Q. Have you ever figured it for 6 feet, of the "Beaver"? A. No.
 - Q. Or 5 feet? A. No.
 - Q. Or 3 feet?
- A. No. I told you at the beginning I assumed 10 per cent of the time.
 - Q. You assumed 10 per cent of the time?
 - A. Yes.
- Q. Now, as I understand it, all vessels that are contracted for are contracted to make a certain speed under what are known as trial-trip conditions?
 - A. Yes.
- Q. Did you ever contract to build a ship in which there was anything in the contract about the effect of a heavy sea upon the propeller? A. No.
- Q. So that calculations as to the effect of waves in reducing the speed of a vessel are not part of the commercial end of your business?

 A. No.
- Q. I understand you to say that you had certain data in certain of these computations you have made that you had gotten from United States Naval Officers? A. As to stopping of vessels, yes.

- Q. And you said you preferred that to the data of merchantmen, did you not?
 - A. I prefer it on account of its being more accurate.
- Q. Then you would say that Naval Officers are more accurate observers than the merchantmen?
- A. They are, generally speaking, more accurate. [964—840]

Further Redirect Examination.

Mr. McCLANAHAN.—Q. Mr. Dickie, I think I will venture one more question even at the risk of its leading to another long cross-examination. Would it make any practical difference as far as the retardation of the "Beaver" is concerned—this after $\frac{7}{8}$ of a knot retardation—whether she was headed into the swell or going with the swell?

A. No appreciable difference. It might make the one one-thousandth part of a knot difference, but it would not be over that; and let me put in one thing, I mean without wind; I mean the swell per se—the swell itself.

Further Recross-examination.

Mr. DENMAN.—Q. You think the swell that hits the cliff and wears it away would not have any effect on the bow of the vessel?

A. I could write a book as big as a box would hold and explain it to you. But it is a long process. It is very simple as to what hits the cliff, but it is very hard to explain. It fits into my mind just as simply as rolling off a log.

Q. And so it does into mine.

A. But it is not what you think it is at all. Sup-

pose the swell travels at 20 knots an hour, and there is no wind, and you turn your ship first the one way and then the other, there is no appreciable difference in the speed of your ship whether you are going against the swell or with the swell, not the slightest sign.

Q. Presuming a ship going at 20 knots?

A. I don't care what speed you were going at. If the sea is going at 20 knots, which is a common speed for a sea, it is not an extraordinary speed, a wave travelling 20 knots an hour [965—841] is not extraordinary.

Q. How fast would a long swell travel?

A. I don't remember the exact figure. It is the multiple of its length. I don't remember the figure for it just now, but it runs in my mind that a 20-knot sea is quite a common thing.

Q. As a matter of fact, you have heard of 40-knot seas? A. I have heard of 40-knot seas.

Q. And the greater rapidity with which the wave travelled, of course, gives a greater frequency of exposure of the wheel? A. No.

Q. It does not?

A. No, because the wave is longer; the speed of a wave is due to its length.

Mr. McCLANAHAN.—Have you not exhausted that subject, Mr. Denman? That has nothing to do with my simple, poor little question that I asked.

The WITNESS.—No, he would not exhaust that subject in a month. I remember a discussion that took place in the Santa Barbara Channel one time

among some naval officers, as to speed; one of the naval officers accounted for a difference by saying that the earth was not a perfect circle, and he figured out that there was 2 inches difference in 40 miles, and he said that made a difference in the speed of the ship. How it made it, I don't know, and to what extent it made it I don't know. If you bring up questions like that you will never get through.

Mr. DENMAN.—I think Mr. McClanahan is right, that my question is more pertinent to other portions of your testimony than the last question brought out. That is all, thank you.

The WITNESS.—If you choose to read into my testimony—you objected yesterday that I did not have the displacement of [966—842] the ships. I have since looked up the relative displacements of the "Majestic" and the "Siberia" and the "Beaver."

Q. There is quite a difference, is there not?

A. There is quite a difference, but that is very easily figured—it is very easily taken into account; it is very simple. There is one thing that did not astonish me, although it would astonish you probably; for instance, the "Majestic" takes 2100 horse-power for a knot and a quarter up to 20 knots, and she is 16,485 tons displacement. Then I took another fast one, the "Belle Machree," and she took 2050 horse-power for a knot and a quarter and 24 knots, and she is only 3353 tons displacement. You will see that it is practically the same. I merely introduce that to show you that these things are resolvable into figures if you can get the facts. If the Captain

will testify to the pitch of the ship, I will get very close to the reduction in speed.

Mr. DENMAN.—Mr. McClanahan yesterday asked for the statement of Judson. This statement was given to me by the agent of the claimant and is, I take it, a privileged communication; however, as we have waived our privilege in regard to the statements made by Captain Kidston to us, also Ettershank, also the testimony of our stenographer, and if Mr. McClanahan still wants to inquire further into that, he can have the statement.

Mr. McCLANAHAN.—I will take your statement that the written statement signed by Judson is the same as the statement which was read from the stenographic book of your stenographer.

Mr. DENMAN.-No.

Mr. McCLANAHAN.—Then I want the written statement. [967—843]

Mr. DENMAN.—And I will state also, in order that you may further clear up the matter, I will waive any privilege I have of my own and will submit to such examination as you may want in regard to this statement, and perhaps I can give you some facts that would add to those you already have.

Mr. McCLANAHAN.—We introduce the statement in evidence and ask to have it marked Libelants' Exhibit 22.

Now, Mr. Denman, what about the data we have asked you for—how about the stipulation in regard to it?

Mr. DENMAN.—Do you desire any further exam-

San Francisco & Portland Steamship Co. 1137

ination into what transpired in my office in regard to this statement?

Mr. McCLANAHAN.—Mr. Denman, if I wanted to examine you, I would say so. You have suggested that twice now in the record. For what purpose I do not know. You have told me that twice now.

Mr. DENMAN.—I did not think you would understand the purpose of it. Mr. Derby does understand, of course.

Mr. McCLANAHAN.—Mr. Derby is a man of understanding. But, seriously, now, what about that data?

Mr. DENMAN.—I am not prepared at this time to admit that the deductions which you draw from that data are correct.

Mr. McCLANAHAN.—Do you really understand what I want?

Mr. DENMAN.—As I understand it, what you want us to do is to admit that the data contained in the blue-prints which were furnished by the contractors to the owners in order to show that the contractors had complied with the contract, that that data will sustain the statements that were made the basis of the expert questions put to Mr. Dickie.

Mr. McCLANAHAN.—That is not what I want at all. I want [968—844] you to admit that if the builders of the "Beaver" were called they would testify as to the draught of the "Beaver" on the trial trip, and as to her displacement at that draught, as being the same which is the basis of my hypothetical question. That data appears on the blue-prints

which have been furnished to the owner of the "Beaver" by the builders, and it seems to me a very simple admission for you to make—that her draught and the displacement, as shown by our hypothetical questions, which correspond with the draught and the displacement as shown on your plans furnished by the builders, is the draught and the displacement which if the builders were called they would testify to.

Mr. DENMAN.—Yes, we admit that.

Mr. McCLANAHAN.—That is all we want.

Mr. DENMAN.—We do not desire to admit any of the facts that appear on the blue-prints—that is, any of the other facts, only the draught and the displacement at that draught.

Mr. McCLANAHAN.—That is all I have asked for.

Mr. DENMAN.—Now, we rest, subject to the right to cross-examine Captain Lie further, and to meet any matters that may be put in in rebuttal.

Mr. McCLANAHAN.—Of course, you have the right to meet any new matters that would be put in on rebuttal.

Mr. DENMAN.—Well, any evidence on existing matters. I do not suppose there can be any new matter put in now. If new evidence comes in, we will have to meet it.

Mr. McCLANAHAN.—Well, whatever your rights are, cannot be changed.

(A recess was here taken until 2 P. M.) [969—845]

San Francisco & Portland Steamship Co. 1139 (Testimony of Olaf Lie.)

AFTERNOON SESSION.

Mr. McCLANAHAN.—I understand that the claimant wishes to recall Captain Lie for further cross-examination. I think, in order to save time, I will ask Captain Lie some further questions myself on the question of damages. He is going away and this evidence which I am now going to introduce will not be used until a reference has been made to the commissioner.

Mr. DENMAN.—You can start in on your case and I will have my cross-examination all in one bite.

Mr. McCLANAHAN.—No. You said you wanted to further cross-examine him on the evidence already in.

[Testimony of Olaf Lie, for Claimant (Recalled).] OLAF LIE, recalled for further examination:

Further Direct Examination.

Mr. McCLANAHAN.—Q. When was the "Selja" contracted for?

- A. In the latter end of April or the first of May, 1907.
 - Q. When was she completed?
 - A. On the 7th of November, 1907.
 - Q. Where was she built?
 - A. West Hartlepool, England.
 - Q. By whom? A. William Gray & Company.
 - Q. What is she classed in Lloyds'?
 - A. 100 A-1 Special Survey.
- Q. How is that special survey designated in Lloyds'? A. With a star behind the A-1.
 - Q. What style of type of ship is the "Selja"?

- A. She is a common cargo boat, called the spar deck.
 - Q. Have you seen other vessels of her type?
 - A. Yes, sir.
- Q. Is there any difference between the "Selja" and the ordinary common cargo steamer that you have seen? [970—846]
- A. No, not except that she was very well equipped with discharging gear and also with her holds; that is to say, the quarter stanchions on each hatch were taken away in order that they might not interfere with the lumber and, therefore, she had to get stronger beams; stronger beams in the way of hatches.
- Q. What was the condition of the "Selja" on the day of the collision as compared with her condition when she was first built?
- A. Well, my opinion of that is that she was nearly as good as she was when she was built.
- Q. Were you continually on her from the time she was built until she sank? A. Yes, sir.
 - Q. Were you present during the trial trip?
 - A. Yes, sir.
- Q. Were you there at any time during her construction? A. Yes, sir.
- Q. What was done by you as master of the "Selja" to keep up her condition?
- A. Well, as a rule you keep her in the same order as much as you can; that is to say, you scrape and paint wherever you see any rust. You open her bilges, tanks, and everything and overhaul them and look after her and see that she is kept in good order.

San Francisco & Portland Steamship Co. 1141 (Testimony of Olaf Lie.)

- Q. Was that done on board the "Selja" by you?
- A. Yes, sir.
- Q. How often was she docked?
- A. About every six months.
- Q. What was done with her when she was docked?
- A. Cleaned and painted—the bottom of her.
- Q. Were any repairs ever made to the "Selja"?
- A. Yes, sir.
- Q. What were they?
- A. They were some average repairs to her bottom.
- Q. What did the repairs consist of?
- A. Taking out a few plates and renewed them and put them in again in the same order. [971—847]
- Q. Was the value of the ship at all affected by these repairs?
- A. No, sir; she was also in the special survey during these repairs and classed the same in Lloyds' after her repair was completed.
- Q. Captain, have you a blue-print of the plans under which the "Selja" was constructed?
 - A. Yes, sir.
- Q. Please produce them. Are these the plans that you refer to (indicating)? A. Yes, sir.

Mr. McCLANAHAN.—We offer the plans in evidence and ask that they be marked Libelants' Exhibit No. 23.

- Q. Do you know the cost price of the "Selja," Captain? A. Yes, sir.
 - Q. What is it?

Mr. DENMAN.—Q. Do you know of your own knowledge?

Mr. McCLANAHAN.—Q. How did you get the knowledge, Captain? A. From the builders.

Mr. DENMAN.—We object to it upon the ground that it is hearsay.

Mr. McCLANAHAN.—We will put it in for what it is worth.

A. 45,792 pounds. When you asked for repairs there is something I forgot; when the ship was 18 months old we put in a new winch in her, sent from England to Hongkong.

- Q. Was that an additional winch from the one that was on the ship when she was constructed?
 - A. Yes, sir.
- Q. The one that was on the ship when she was first constructed was still in use?
- A. Yes, we simply placed two when there was one before.
 - Q. Then that was an additional winch?
 - A. Yes, sir.
 - Q. That is hardly a repair?
- A. No, it is hardly a repair. It was put on her. [972—848]

Further Cross-examination.

Mr. DENMAN.—Q. Captain Lie, you testified on your former examination that you had never heard that the fog affected the direction from which whistles came. You recollect that testimony, do you not? A. Yes, sir.

Q. You have read these notes of the International Marine Conference, at Washington, have you not?

A. I read some of it, yes.

Q. Some of this discussion concerning fog, and the adoption of this rule we have in dispute here—you read that portion of it, did you not?

A. Yes, I read some of that regarding Article 16.

Q. Do you recollect reading the statement of Mr. Flood? Mr. Flood was the delegate from Norway at this conference, was he not?

A. Yes, I think he was.

Q. Did you read this:

"Sometimes in a heavy fog you can hardly hear the whistle. I have seen, when the fog partly lifted, the steam come up from the steam-whistle on the port side and I have heard the sound come up on the starboard side; the sound has gone around and followed the openings in the atmosphere and come up on the starboard side. Every practical seaman will agree with me that when he has expected to find a fog signal on the starboard quarter he has often found it on the port quarter."

Do you recollect reading that language in there?

A. Well, I don't say I recollect reading it; I think
I have read it but I don't recollect reading it.

Q. So you were incorrect when you stated you never had heard of that peculiarity of sounds in the fog being commented on? [973—849]

A. I never have experienced it.

Q. No, I asked you whether you ever had heard of it in your experience at sea and your answer was you never had?

A. I don't think I understood the question.

- Q. As a matter of fact, you had read this book at the time and read this statement of your countryman?
- A. I don't think I said I never heard of it; I said I had never experienced it.
- Q. Whatever you said was incorrect if you did state that you had not heard before that the sounds in the fog have travelled in many prospective ways?
- A. Well, if I said that I had not heard of it I would say that it is not absolutely correct, no, but I never experienced it myself.
- Q. You have heard of it very often, Captain Lie, have you not? A. No, sir.
- Q. Did you ever hear of it anywhere else than in this book? A. Never.
 - Q. Only in that book? A. Yes.
 - Q. Was it not taught in your nautical school?
- A. No, sir, not that we could hear a whistle, when we hear it on the port side that we thought it was on the starboard side.
- Q. I am not asking you that now: was it not taught you in the nautical school, that the sound of whistles was deflected by a fog?
- A. No. The only thing they were teaching about it was that if a whistle is badly located on land it may be deflected there, but I never heard it was deflected in the fog itself.
 - Q. You never heard that? A. No. [974-850]
 - Q. You are sure it was never taught in your school?
 A. No.
 - Q. Who were the professors in your school?

A. They were educated—

Q. (Intg.) Who are they? What are their

A. Captain Bergeson is the head man of the Nautical School in Norway. He is a naval officer.

Q. Who else were you under at that time?

A. Well, Captain Hoff was one. I don't remember the names of them now.

Q. You cannot remember who your instructors were there?

A. There were many instructors; we had 6 or 7 of them.

Q. You cannot remember now but those two names at this time?

A. Well, that was passing as master, passing as mate I had a man by the name of Oaien.

Q. You never heard while in the Nautical Schools, that the location of a vessel from another vessel at sea in the fog was a matter of uncertainty due to the effect of fog on the sound of the whistle?

A. No, sir, not the location, but that the sound would not be heard as far under certain circumstances as others again, so we had to be careful before we heard the whistle—that is to say, when you made a point, or anything like that, you could not always rely upon the whistle before you heard it.

Q. How do you mean you could not rely on the whistle before you heard it?

A. That is to say, if you are making a point you cannot be sure you will hear that whistle before you run the point, but as soon as you pick it up—I never

had any difficulty whatsoever as soon as I picked up the whistle; then I am safe. [975—851]

- Q. About how many points off your bow was the "Beaver" as she approached you in the fog, as you now have discovered?
 - A. About a point and a quarter.
 - Q. A point and a quarter?
 - A. Yes. She proved to be that.
 - Q. That is, when she came in sight?
- A. No, not when she came in sight. She was then about 2 points.
- Q. Did the lookout report that fact to you? Did he agree with you on that? A. When?
- Q. When she came in sight; did the lookout agree with you on that?
- A. I do not think I paid any notice to what the lookout said when she came in sight.
- Q. As I understand it at that time your claim is you went astern about 100 feet from the point where you first saw her?
- A. Well, I would not say the number of feet, but I said perhaps she would do it; of course, I would not say.
 - Q. It might be 150 feet?
- A. No, I do not think it is 150, although I could not say. It is hard to say how many feet she did travel astern.
- Q. What was the course of the "Beaver" through the water, figuring it out from the testimony you have here now, at the time you first saw her? As I understand it, when you first saw her you said that the

three whistles had just blown? A. Yes, sir.

- Q. What was the course of the "Beaver" at that time?
 - A. I did not see her course at that time.
- Q. I know that, but computing it from the evidence you have here now. You remember you have computed a great deal from Captain Kidston's evidence, have you not? A. Yes.
- Q. Now, computing it from the evidence of Captain Kidston and the other officers on the "Beaver," and taking into consideration [976—852] her ordinary course on the coast, what direction was she sailing in at the time you saw her, just as the three whistles blew on her?
- A. Oh, she must have been heading on the course as Captain Kidston said, somewhere around west I should say.
- Q. Well, let me see—half a point is how many degrees? A. 53/4—57/8.
 - Q. About 6, is it not, in round figures?
 - A. 6 degrees, yes, sir.
 - Q. So she would be about 2 south of west?
 - A. Yes, 2 degrees south of west.
 - Q. And a quarter of a point is how much?
 - A. 3 degrees, in rough figures.
- Q. Then, if the "Selja" swung about a quarter of a point before she was struck she must have been heading about due south at the time the "Beaver" came in sight? I am presuming this. This is a theoretical case now. I am not asking you the facts at all, but I am presuming a theoretical case. I

say if the "Selja" had swung but a quarter of a point before she was struck she would be sailing on a course due south, would she not—practically?

- A. Well, it would depend on how much she was heading when she sighted the "Beaver" would it not?
- Q. I say if she had swung but 3 degrees at the time she struck she would be heading about due south when she saw the "Beaver" Would she not?
- A. Well, then the "Beaver" must have come up from south southeast if I should sight her 2 points on the bow.
- Q. Presuming now that you sighted the "Beaver" when the "Beaver" was on a course due west—2 degrees south of west—and that the "Beaver" did not change her course at all up to [977—853] the time of the collision and that the "Selja" swung but 3 degrees, or a quarter of a point, at the time she was struck, she must have been sailing due south, or thereabouts, at the time she sighted the "Beaver," must she not?
- A. No, I don't see why. It depends on other circumstances.
 - Q. What are the other circumstances?
- A. Well, I expect you base them on that the "Beaver" proceeded and struck at right angles—is that it?
 - Q. Presuming that, yes.
- A. And that the "Selja" did not swing—that the "Selja" swung 3 degrees—that is practically nothing.
 - Q. It is a quarter of a point, is it not?

A. Well, it is a quarter of a point, yes, but you could not count that.

Q. I say presuming that?

A. She would be heading south when she struck.

Q. I say when she saw the "Beaver." If she only swung a quarter of a point when she was struck, at the time she saw her she must have been pointing south?

A. Yes, if she only swung a quarter of a point during that time.

Q. I am presuming that; I am only relying on your testimony. A. That is it.

Q. Perhaps you did not do it. How much power have you got in your engines, how much horse-power?

A. Ordinarily somewhere around 1600.

Q. Ordinarily? A. Yes.

Q. What did you have on this day with 150 lbs. of steam? A. With 150 lbs.?

Q. That is what you said?

A. I didn't know; I didn't know how much horse-power she had that day. Of course, we would [978—854] not go with 1600 horse-power half speed. That is a sure thing. I mean ordinary full speed with 1600 horse-power.

Q. How many horse-power would she be going with at half speed?

A. I don't know; absolutely I don't know; I have no knowledge.

Q. Well, about how many?

A. That is very hard to say. I would not guess at it because I don't know.

Q. Would it be half your ordinary horse-power?

A. I could not say. That is something I could not say.

Q. It would be something less than half, would it not, Captain?

A. Perhaps less, yes—perhaps.

Q. So that that was all the horse-power you had available for going astern, was it not?

A. No. We had more horse-power for going astern because the engines were shut down and therefore the engines did not develop going ahead but she could develop more going astern.

Q. How much do you think now she developed going astern?

A. Well, that is hard to say. I could not say that. I don't know the revolutions, but I should say that she must have developed at least 1,200 or 1,300 going astern, although I don't know. That is only a guess you know.

Q. How long would it take for that power to begin to assert itself? A. What is that?

Q. How long would it take for that 1,200 horse-power to assert itself and really get to work?

A. I could not say that either. I could not say on a case like that. It may come very quick. If you have not got much speed ahead the engines could commence to do work at once. If a vessel is practically at rest, for instance, when you reversed them the engines would commence to work pretty [979—855] near at once at full power.

Q. Well, not at full power, you mean as much

San Francisco & Portland Steamship Co. 1151
(Testimony of Olaf Lie.)

power as you could get out of the engines at that time?

- A. I mean as much as you could get, yes.
- Q. Yes, under the conditions? A. Yes, sir.
- Q. You recollect testifying, of course—well, you have testified to that already, that you do recollect testifying you had swung but a quarter of a point before she struck?
 - A. I don't recollect that at all.
 - Q. You said that on your direct examination.
 - A. Here?
 - Q. Yes, here?
- A. No, sir. I said that the "Selja" swung about a point, that she had swung about a point when the "Beaver" came in sight.
- Q. I have asked you about this before. You have forgotten it. Do you remember testifying you could see about three ship-lengths from you?
- A. Well, 2 or 3 ship-lengths, yes. I said about; 900 feet I said.
 - Q. Do you remember this:
 - "Q. How were you heading when you saw the other ship, do you recollect?
 - A. We were off the coast. The Third Officer was logging south 65 east magnetic'—
- Mr. McCLANAHAN.—One minute; what are you reading from?

Mr. DENMAN.—The record before the inspectors. The same place that I read in a former examination of the Captain in this case.

"At the moment she struck I should think he came a quarter of a point south. His wheel was on the starboard quarter."

Do you recollect that testimony now? [980-856]

A. I recollect it when you read it, but I don't understand that testimony. That is wrong altogether. I don't understand anything of it. I don't know what logging is at all. And another thing, I don't think I said a quarter of a point.

Q. Don't you recollect it?

A. I recollect you read it last time, but I don't recollect that I said so. I recollect that you read it for me once before and I said then I did not understand it.

Q. I will read this again:

"At the moment she struck I should think he came a quarter of a point south."

A. Our vessel swung considerably after we reversed the engines.

Q. If you did make this statement at that time, and if it is pretty keen in the recollection of two or three people who heard you and noticed it as significant, you want to change it now, do you?

A. I don't think I said so, because I don't understand it. I said that this quarter of a point, or something like that, applied to the vessel when we saw her; but when she struck she was more than that.

Q. Do you suppose anybody could get in the record "at the moment she struck I should think he came a quarter of a point south"; do you think of any con-

ceivable language you could have used that could be twisted like that in the record?

- A. I don't know what can be twisted. I know that my vessel swung more than a quarter of a point before the "Beaver" struck her.
- Q. You didn't strike anything else that day, did you, but the "Beaver"?
- A. I didn't strike anything; I don't think I struck the "Beaver" either. [981—857]
- Q. Captain Lie, what were these men that were lost? They were firemen, were they not?
 - A. A sailor and a quartermaster.
- Q. Have you heard anything from them or about them since the accident to the vessel? A. No, sir.
- Q. Was it the quartermaster who was at the wheel who was lost?
 - A. No, sir, he had his watch below.
- Q. You have testified that you thought you began to go astern after you saw the "Beaver"; that is correct, is it not?
- A. Yes, she commenced to get sternway sometime after, I don't know how long it was after, but she had sternway.
- Q. You testified that you ordered her full speed astern? A. Yes, sir.
- Q. Captain, let us get back to your theory of these Pt. Reyes fog-signals; what direction was the whistle from you at 2.50?
- A. It was abeam, and that would be about north 30 degrees east from me. It was abeam on the course south 60 east.

- Q. And at 3 o'clock where was it?
- A. Due north magnetic.
- Q. Where would it be at 2:55, presuming you went at the same rate through the water from 2:50 to 3 o'clock. Just figure it out, if you will?

A. It would be north 15 east, about; it would be about that.

Q. You were speaking of the chart you used on that day; was it one you customarily used in approaching the harbor?

A. I always had that chart except for the entrance to San Francisco; then I had a larger one; I should say it is a copy of the chart which was introduced here of the entrance to San Francisco harbor. It is a British admiralty chart. But the chart I used to navigate was a chart—I don't recollect the number but I think it was from Conception Point to Cape Mendocino—a British admiralty chart. [982—858]

Q. From Conception to Cape Mendocino?

A. Yes; I think it was that; I am not absolutely sure of it.

Q. That was a proper chart to use under those circumstances?

A. I bought all the charts in England for around the world and I had these charts.

Q. You had something like half a million dollars of property under your charge at that time, did you not—the ship and the cargo? A. Yes, sir.

Q. So you had a chart large enough for the purpose of taking care of your property, did you not?

A. Yes, I had.

San Francisco & Portland Steamship Co. 1155 (Testimony of Olaf Lie.)

Q. Now, do you believe that under such a chart you cannot compute within two miles of your destination in a run of 24 miles?

A. If I shape a course for two hours, for instance. for a point—which I did that day, or perhaps it would be 3 or 4 hours for the "Selja" running at half speed—that course would be checked up later on again because I would not rely upon steering on that course with a current perhaps on either side, a little current on either side; I would check that up with a sounding, or if it cleared up I certainly would have checked it up. But the course from Pt. Reves to the Light-ship is about south 65, I think on that course, on the right course, so if I passed a mile and a half off Pt. Reyes I would be about a mile and a half off the Light-ship—about that; that is the outside. I did not particularly steer for the Light-ship either. Of course, I wanted to make the Light-ship if I could get a pilot, but the pilots are always coursing a little to the north, or between the Light-ship and the Farralones.

Q. Do you recollect offering in evidence as your statement at the hearing before the inspectors the log-book entry for the [983—859] steamer "Selja"? A. Yes.

Q. That is a document required by your Government, is it not? A. An abstract of the log, yes.

Q. And the captain is required to prepare that and send it on, is he not, or have it prepared—I mean the master?

A. It is not absolutely for him to prepare it. But

he shall sign it. He shall sign it, yes. And it shall be a true copy of the log-book. But it is always kept by the chief officer, under the captain's management, of course. But the abstract shall be a true copy of the log and nothing else.

- Q. But you were in charge of the vessel, of course, at the time of the collision? A. Yes.
 - Q. The first officer was not?
 - A. He was not in charge, no.
- Q. And you had been during the previous half hour, had you not?
 - A. I had been in charge I might as well say all day.
- Q. It was not even the first officer's watch on the bridge? A. No, it was not.
- Q. Not at the time of the collision or within 2 or 3 hours prior thereto?
 - A. I would like to make a statement of this—
- Q. (Intg.) Is this in answer to my question, or is it something outside?
 - A. It is in answer to the question.
- Q. Just confine yourself to answering the questions.
- A. I would like to make a statement on account of that just right here.
 - Q. I have not asked you anything about this.
- A. I would not do you any harm; I will be absolutely fair.
- Q. But you expect something out of this that you have to explain, don't you?
- A. No, absolutely not. I will tell you the reason why the three officers signed it, I will tell you the

(Testimony of Olaf Lie.) reason why? [984—860]

Q. I don't ask you for the reason.

Mr. McCLANAHAN.—Never mind, Captain, I will bring that out.

Mr. DENMAN.—I prefer to pursue my examination to the end and then Mr. McClanahan will pursue his examination, and then I can come back at you again possibly.

A. All right. It is not necessary for me to put it in.

- Q. You recollect that this was read at the hearing before the inspectors, do you not, as your statement?
 - A. Yes, absolutely.
- Q. You recollect this statement contained in here: "We then set the course by compass south 65 east straight for the Light-ship." You recollect that statement, do you not?
 - A. Yes, I do, but I did not translate it.
- Q. Is there anything in the Norwegian statement that bears a different translation than that?
- A. No, I don't think so. But a Norwegian would not express it absolutely straight for the Light-ship, I would say, perhaps, that I shaped the course forward of the Light-ship.
- Q. What is the word that corresponds to "straight"? A. It is "ret."
- Q. What does "ret" mean—right for the Lightship, direct for the Light-ship?
- A. It does not really mean direct for the Lightship, not absolutely for the Light-ship.
 - Q. Well, why didn't you just say "for the Light-

ship" instead of putting in the word "ret"?

- A. Well, it is accidentally put in. I don't think anything seriously of that at all. I just put it in and I don't see anything wrong in it.
- Q. That is all right then; you put it in; so you drew this statement, did you?
 - A. No, I did not draw it.
 - Q. You just said you put it in?
 - A. It is put in I said. [985—861]
 - Q. No, you didn't say that; you said you put it in?
- A. I will tell you how it is. This statement—on the 23d I was very busy; I had to report; I told the first officer to take the three officers together and make up the statement of each one. They had their respective watches all day, and to make them up and that then when they were through with it, and I was finished in the forenoon, I would look over it and I would see if it corresponds with the truth. I didn't see anything wrong in it, except what I added to it, although I didn't add anything to it, but it was the last watch—there was something omitted that I put in.
- Q. You just said you put in the word "ret" in the fourth paragraph?
 - A. I don't think I put it in at all.
 - Q. You just said you did? A. Did I?
 - Q. Yes.
- A. Well, I don't think I put it in. When the course was shaped at 2:50 the officer just put it in perhaps right to the Light-ship but he really didn't know how that went, he didn't see a chart, he didn't

(Testimony of Olaf Lie.) see a chart after he came there.

- Q. So whatever he did there he did under your direction?
- A. Of course, I didn't see anything wrong in it and I didn't think there was anything serious in it at all.
- Q. Your course was not straight for the Lightship, was it? A. No.
 - Q. It was a mile and a half or two miles off?
 - A. About a mile and a half.
- Q. As a matter of fact, when it comes to measuring up your sounding, it was two miles off, was it not?
- A. Not the sounding the chief officer reported to me. [986—862]
- Q. The chief officer reported to you a sounding that he had taken at 2:30?
- A. He came on the bridge, as I said before, at 2:55 perhaps; I would not say sure to the minute; he came after I passed the point and he came with the slips and he was on the bridge while I went in the chartroom. I may have mistaken the slips, but I don't think I did. It seems to me he had 29 fathoms, and we were abeam of the light. I also had the bearings which I had taken myself, and it seemed to correspond. I did not plot out, as I said before, within 2 or 3 ship-lengths; perhaps it was 4 or 5 ship-lengths. If I had a bearing as close as 3 or 4 ship-lengths I knew I was safe.
- Q. Now, just answer my question and don't go into a long digression. You remember testifying that you did not know whether or not the slips contained

the bearing of 2:30 o'clock. You recollect that, don't you?

- A. And that is the reason I don't now recollect; if I was wrong you see I don't remember now.
- Q. Of course, if you were wrong the position of your boat must have been out where the sounding was, not where you thought?
 - A. Yes, it should have been there.
- Q. Do you recollect the testimony of the first officer, that he left off sounding before 2:45 and went to the bridge?
- A. He said he was relieved at 2:45, but who took the sounding at 2:45 I don't know.
- Q. And you recollect the testimony that each sounding thereafter was 35 fathoms up to the time of the collision?
- A. That appears in the evidence of the second officer, yes.
- Q. You also recollect saying that you consulted with the second officer afterwards and he got 35 fathoms? [987—863]
- A. He did not say he got 35 fathoms all the time. And I think he told me when we were in the boat before we were picked up after the collision—he said, "Well, she is safe because it is 35 fathoms where she is now." I think he said that in the boat. We both looked at the watch when she sank.
- Q. Don't you know that he testified he did not know what it was at 3:10, that he never took a sounding after that?
 - A. He said he took the sounding at 3:10. From

3:10 to 3:15 we didn't run more than 1500 feet—oh, no, I didn't run that far; I run from 3:05 about 1000 feet I should say, two or three ship-lengths, and in two or three ship-lengths you cannot say there is any difference in the sounding.

Mr. McCLANAHAN.—Q. Captain, you said from 3:05? A. From 3:10 I mean to 3:15.

Mr. DENMAN.—Q. That 3:05 crops up again rather significantly. As a matter of fact, you did run about three ship-lengths from 3:05?

- A. No, sir; from 3:05 we run about half a mile.
- Q. That is what you say now?
- A. That is what I always said.
- Q. How could she have run all that distance if she was nearly at a standstill at 3:10?
- A. Now, you bring that out again, I will tell you, Mr. Denman, that when a ship gets down to 3 knots you might as well say that she is nearly at a standstill because she is not moving but as—she may appear nearly at a standstill, but the rules of the road say—and I would like to read the rule if you wish me to—a steam vessel under head but having no way upon her shall at intervals of not more than two minutes blow two prolonged blasts, with an interval of one second between. [988—864]
- Q. What has this to do with my question? Please read it to him. (Question read by the Reporter.)
- A. Well, I did not say that she ran 1,000 or 900 feet, but I said she would run about 2 or 3 ship lenghths—3 ship-lenghths I should say; about 1,000 feet.

Q. When she was nearly at a standstill? Why did you say she was nearly at a standstill at 3:14?

Mr. McCLANAHAN.—I object to the question upon the ground that the captain has not said she was nearly at a standstill. That is a quotation from the translation of the Norwegian log.

Mr. DENMAN.—Q. Why did you state she was nearly at a standstill at 3:14?

A. A big ship like that, when she commences to travel at as low a speed as that, she may appear to anybody as nearly at a standstill for a long time.

Q. So that when the vessel stopped her engines at 3:10 she looked to you to be nearly at a standstill, is that it?

A. Well, I knew she was going somewhere around 3 knots, although I did not know exactly at that moment.

Q. Or possibly 4 knots?

A. Well, she was going about 3. Generally slow speed is somewhere between $3\frac{1}{2}$ and 4 knots sometimes.

Q. So that your description of a vessel going through the water at $3\frac{1}{2}$ or 4 knots is that she is nearly at a standstill?

A. Not exactly when she stops, but she may appear when you stop her engines, that she is not moving very fast.

Q. She may appear—I am asking for your description of a vessel moving at $3\frac{1}{2}$ or 4 knots through the water; is that [989—865] nearly at a standstill according to your definition? A. No, sir.

Q. But when I first asked you about that, you said that phrase had gotten in at the wrong place?

A. Yes, I said that phrase was not absolutely a good phrase.

Q. It was not a happy phrase?

A. I don't say happy; I don't see anything wrong about it.

Q. Your idea is that the mate who drew up this thing thought that the Norwegian words used there described the vessel going through the water at the rate of 4 knots, did you?

A. He didn't know what she was going at that time except he knew that the engines were stopped.

Q. How did that phrase "nearly at a standstill"—get in there if he didn't know?

A. The chief officer, I meant; the third officer would know.

Q. You said the chief officer made up the statement?

A. The chief officer wrote it on the consultation of the two officers with him.

Q. So the result of the consultation of those officers was that they described a vessel going through the water about $3\frac{1}{2}$ or 4 knots as a vessel being nearly at a standstill; do you suppose all those men could have made that statement?

A. Well, I don't know whether they all could have made it, but I don't see any seriousness in it. She could not be at a standstill—that is a certainty.

Q. So that either one thing or the other is wrong; if the statement is in here that she was nearly at a

(Testimony of Olaf Lie.) standstill, that is incorrect according to your statement, is it?

- A. It depends upon what you mean by nearly at a standstill; it may be she was as nearly at a standstill as she could be [990—866] by the vessel being stopped to 3 knots.
- Q. Then if she stopped at 16 knots you would say the same thing, that she was stopped at 16 knots, but nearly at a standstill because she was as slow as she could be, stopping 16 knots?
 - A. I did not say that. That is an extremity.
- Q. Well, I suppose that all those hours that you proceeded at a 3 or 4 knot speed you were nearly at a standstill that day—is that correct?
- A. No, not as long as the engines were going she could not be at a standstill.
- Q. So that if this statement, given as your statement before the inspectors, makes it appear that you stated that she was nearly at a standstill when as a matter of fact she was going through the water at between $3\frac{1}{2}$ and 4 knots, you desire to have that corrected, do you?
- A. I have said what I said. She was not at a standstill and she did not appear at a standstill. I said that she was to me practically at a standstill at 3:15 although I would not say for sure that she was at a standstill, but as I looked at her I think then I would not be wrong in my opinion to give that signal that she was at rest, although the word "standstill" is never used by me.
 - Q. You used it all the way through here.

- A. I never used it. It is translated that way in the log.
- Q. You used it when you were on the bridge of the "Beaver" in talking to the officers there?
- A. No, sir; I never used the word standstill. You may say that a horse stands still, but I never used that word about a ship. [991—867]
 - Q. You never did? A. No.
- Q. Don't you know that every time you have spoken to me about this matter, either in my examination of you or in my talks with you outside, that you used the word "standstill"?
 - A. No, sir, never.
- Q. Don't you know that you said at least 3 or 4 times to me that you never were at a standstill?
 - A. Well, you may have used it.
 - Q. No, I mean in the course of conversation?
- A. Well, that may have come from that, but I never used it. That is the absolute truth. I never did use it. Standstill never occurred to me before it was translated into that log. I said to myself that that is not a good phrase in the sea language, if you can say so.
- Q. Oh, you did. You said that to yourself, did you? A. Yes.
- Q. That was the translation put in as your statement? A. I had not translated it.
- Q. That was a translation that was to be put in as your statement before the United States Inspectors, was it not?
 - A. That was translated for the Norwegian Consul.

I had nothing to do with the translation.

- Q. Didn't you go over it with him before he made a final copy of it? A. No.
 - Q. What?
- A. I never did. He translated it. The original was there and there was nothing in the original that I was frightened with, and it was there. I did not bother with it. I relied on it and he translated it.
- Q. Did you not talk with him about the terms used in the translation?
- A. No, sir, never one word, not one word. [992—868]
- Q. So that you just adopted this word "stand-still" afterwards?
- A. I did not see but that standstill was practically the same as a ship would be at rest; I did not see anything serious in the standstill. I never said a word to him about what he said or what he translated.
- Q. As I understand you, then, if you did say you were at a standstill at 3:10, you were not, and if you did say you only swung a quarter of a point at the time of the collision that is a mistake also?
- A. Well, we swung more than a quarter of a point from the time I sighted her.
- Q. Now, let us take the distance off Pt. Reyes. And if you did say you were steering straight for the Light-ship, that is an error also—that is incorrect, is it?
- A. It does not show that it was right for the Lightship, no sir, because just as I said, I went to the chart

and drew the course from Pt. Reyes to the Lightship, and I made that course, but I did not go into the chart-room again. I knew that course would not lead us into temptation before I had time to go in again. I just shaped the course and I would have gone in and checked it up again.

- Q. Then you knew you would come off a mile and a half south?

 A. I didn't know it.
- Q. You knew you were a mile and a half off Pt. Reyes, did you not?
- A. Yes. I just drew the ruler over it and took that course.
- Q. You knew that the direct line from Pt. Reyes to the Light-ship was not that course, did you not?
 - A. It was about 1 or $1\frac{1}{2}$ or 2 degrees different.
- Q. So then you knew that if you kept your course down there [993—869] you would come at least a mile and a half to the southward of the Light-ship?
 - A. I did not know it at the time, no, sir.
- Q. You knew you were a mile and a half off Pt. Reyes, did you not? A. Yes.
- Q. And if you kept your course you knew you would come a mile and a half southward of the Light-ship, did you not?
- A. I didn't know it. I said I knew that that course would not lead us into temptation.
- Q. We will go back and read the testimony for you. (Record read by the Reporter.) Now, Captain, you know as a matter of fact, that the course from Pt. Reyes to the Light-ship is south 65 east—within 3 degrees—is it not?

- A. About. I have not looked—I think the sailing directions show that the course shaped from Pt. Reyes is east southeast in points.
 - Q. Didn't you just tell me now-
 - A. (Intg.) I said about 2 degrees different.
- Q. And you said you went into the chart-room and you knew—
 - A. (Intg.) I did not know at that time, no, sir.
- Q. And you went into the chart-room and drew the line from Pt. Reyes to the Light-ship, when you were in front of the Light-ship in the chart-room in your own vessel—is that right?
- A. I drew the course from Pt. Reyes to the Lightship, yes.
 - Q. And you found that was south 65 east?
 - A. I found the course would be south 65 east, yes.
- Q. And you were at that time a mile and a half off Pt. Reyes, according to your statement?
 - A. Yes.
- Q. Now, do you think that by pursuing a course south 65 east you would not arrive a mile and a half off the Light-ship?
 - A. I don't think I would. [994-870]
 - Q. You don't think you would?
- A. No, sir. That is hard to say because I never rely upon a course steered in a fog like that. I would take soundings. We have opportunity to take observations. We do not rely entirely on a course steered that way without taking soundings or doing something to show that we are going on right.
 - Q. Now, Captain, do you recollect stating in your

prior examination—do you recollect denying that the course you sailed would bring you a mile and a half or 2 miles south of the Light-ship?

- A. I said I denied it would bring me 2 miles out. I said that. It would not bring us 2 miles out.
- Q. And you said you never would shape a course that would bring you a mile and a half or 2 miles out of your way on a 20-mile run?
- A. I don't think I did. I don't think I said I would never shape the course—well, 2 or 3 miles I would say. The course did not go 2 or 3 miles off.
- Q. Would you ever shape a course half a mile away when you could shape it directly for it?
- A. Yes, if I was a long way off. One degree will perhaps take 10 miles.
 - Q. 10 miles on a 24-mile run?
- A. No, not on a 24-mile run, but on a long distance. 2 degrees on that course would be about a mile and a half in that distance. 2 degrees on the compass would be about 2 miles apart at the end of 20 miles.
- Q. So that even on a 20-mile course, you have to steer very carefully so as to not lose ground, don't you? A. Yes.
- Q. You have to make a very close and careful calculation or you will lose ground? A. Yes.
- Q. You would not call it good seamanship to steer a mile and [995—871] a half west of the Lightship if you wanted to go to the Lightship, would you? A. I don't call it bad seamanship.
 - Q. You don't? A. No, sir.

- Q. In other words, you add a mile and a half or possibly 2 miles to your journey in 24?
- A. I would certainly check that course up again. I would go in the chart-room and check it up, or if I did not go some of the officers would check it up.
- Q. You mean check up how much deviation you had on it?
- A. No, sir, not deviation. When a course is checked—I always have the order on board that I checked the course or the officers running it should always go and see if that course is correct. We check it up many times to see.
- Q. Well, you had been running 15 minutes on it, had you not—no, 25 minutes—at the time of the collision?
- A. I did not go in to look because I had something else to attend to at that time.
 - Q. What did you have to attend to?
- A. I think it appears that I heard that whistle, that I was timing that whistle and clearing up my mind as to that whistle.
 - Q. That you remember occupied you until 3:10?
 - A. Yes, sir.
- Q. To clear up your mind as to whether it was the whistle of a ship, or not?

 A. Yes, sir.
- Q. You did not know until 3:10 whether it was the whistle of a ship or something else; that is correct, is it not? A. Yes, but I knew then.
- Q. At 3:10 sharp it came into your mind that this thing you had been hearing a minute apart was a whistle and not something else?

San Francisco & Portland Steamship Co. 1171
(Testimony of Olaf Lie.)

A. I don't say right on the second, it might have been [996—872] 30 seconds before, or something like that.

Q. Could you tell what course the "Beaver" was on during that time before you saw her?

A. I could not tell exactly what she was steering, no.

Q. What did you think she was steering—about?

A. Oh, I didn't think exactly what she was steering. I never thought of the exact course she was steering.

Q. Did you think of her course at all as you came ahead during that time?

A. I commenced to think of the course after I stopped my vessel, yes, sir.

Q. I thought you said you didn't know whether it was a ship, or not? How could you have thought about her course if you didn't know whether it was a ship, or not?

A. I said after I stopped my vessel I commenced to think.

Q. Oh, I see; so up to 3:10 you had no idea whether she had a course, or what the course was, or whether it was a vessel that could have a course?

A. I knew at 3:10 what it was.

Q. Well, it is apparent you could not know what her course was if you did not know whether it was a vessel, or not; that is right, is it not?

A. Yes, sir.

Q. Do you recollect testifying that coming out of the fog you could not tell what course the "Beaver" (Testimony of Olaf Lie.) was on until she had shown up in the fog?

- A. Yes.
- Q. So that up to that time you did not know what course she was on?

 A. Not exactly, no, sir.
 - Q. That was 3:15, was it not?
- A. That was 3:15; I did not know exactly what she was heading then. She may have been heading anywhere at that time. [997—873]
 - Q. Have you a pair of dividers here, Captain?
 - A. No, I have not.
- Q. Captain, if you have previously stated that you had ascertained the position of the "Beaver" prior to 3:10, you wish to correct that statement, do you?
 - A. No, sir, I do not.
- Q. So you think the position of a vessel is ascertained when you do not know what her course is, you do not know how far off she is and you do not know whether she is a vessel, or not—is that correct?
- A. I did not say I did not know it was a vessel all the time, did I?
- Q. You said you did not know until 3:10 that it was a vessel.
- A. No, sir. It came into my mind, just a thought, that it might have been a fog-whistle off the entrance to San Francisco.
- Q. You recollect testifying three times, do you not, that you did not know it was a vessel until 3:10?
 - A. Yes, I remember.
- Q. Do I understand you that you still persist in saying that you have located a vessel or ascertained the position of a vessel when you don't know whether

it is a vessel, or not, you don't know how far off she is, and if she has any course you don't know what it is?

- A. I don't say that I didn't know the course approximately. She was steaming toward us and across our bow a little, but it is absolutely impossible to say to a degree. I knew she was coming toward us. The rule does not say, I don't think, that you shall ascertain the ship's course to a degree.
- Q. Then you still persist that you ascertained the position of the "Beaver" at 3 o'clock?

A. Safely enough to avoid collision, yes. [998—

874]

- Q. Well, that is a matter of inference. You had no absolute knowledge of her position in the water at that time?
 - A. I knew she was a long distance off.
- Q. But you had no absolute knowledge of her position in the water, did you?
 - A. Not absolutely exact.
- Q. You just stated to us that it is well known to you that you may not be able to hear whistles a long distance in the fog and at other times you can hear them at much longer distances; that is correct, is it?
 - A. Yes.
- Q. How could you tell at this time whether this was a whistle near or far in view of the fact that the fog often obscures the sound of the whistle?
- A. I can always hear if a whistle is far off; if it sounds far enough—that is to say, if you listen long enough and you can hear it distinct enough you can

(Testimony of Olaf Lie.) say whether it is far off, or not.

- Q. You can? A. Yes, sir.
- Q. You listened for 10 minutes before you ascertained that, did you not?
- A. I did not listen for 10 minutes to ascertain if it was far off, no. I would like to make a statement here: for instance, I commenced to time the whistle: it sounded pretty regular to me; it sounded so regular to me, it blowed pretty near 5 seconds—the blast—and the interval it seemed the first three whistles I heard pretty near the same. That is the reason I commenced to time it. Before I entered the sound of Pt. Reves my book—and I had the latest book, which I bought in Hongkong, it showed that Pt, Reves should blast every 70 seconds, with a blast of 5 seconds, and a steam-whistle. After I commenced to hear that whistle it sounded every 35 seconds. That is the time that whistle [999—875] was timed—at least twenty times. The blast was about 2½ or 3 seconds, if I remember right. The blast was short. We got it to be about 3 seconds. don't know how long it did blast, but the 35 seconds I am positive of is correct. When I came ashore here I bought a book to see if they had entered the point and I could not find it. It was not in the book that I bought at one of the nautical stores here. I could not get it there that Pt. Reyes was changed. whistle had been changed. I never heard Pt. Reyes whistles myself before.
- Q. Why, Captain, don't you recollect swearing that the reason you knew Pt. Reyes whistle was by

the interval? A. I did not.

Q. You did. You swore that the reason you knew it was Pt. Reyes whistle was because you knew the interval and you heard it?

A. I knew it must have been because it was regularly 35 seconds and by the soundings. I did not know it, absolutely not.

Q. I thought you said it had been changed?

A. I did not know it, but according to that I knew it must be Pt. Reyes because it sounded 35 seconds, and the soundings brought me to it and I knew it could not be anything but that.

Q. It was 70 seconds in the book you had?

A. Yes, sir.

Q. And it was 35 seconds and you said you knew it was Pt. Reyes whistle because it was 35 seconds?

A. I knew it could not be anything else.

Q. You say you knew it by the timing of the whistle, and at that time you said it was a 70-second interval; how can you reconcile those statements?

A. I said it must have been altered. That is what I said. A fog-whistle is often altered. [1000—876]

Q. So you recognized that this fog-whistle blowing at an interval of 35 seconds was the Pt. Reyes fog-whistle because you knew it must have been altered from 70 seconds?

A. Well, I knew I was in the neighborhool of Pt. Reyes and it could not be anything else.

Q. Don't you know you didn't hear that whistle at all?

A. That I didn't hear it?

Q. Yes.

- A. I know that's a damned lie. I deny it. I heard it.
- Q. Don't say damned lie to me, Captain. Don't you know you didn't hear it at all?
- A. That astonishes me for you to say I didn't hear that whistle. Do you think you can scare me? I don't want you to treat me like a liar, because that is absolutely that you believe I am lying; you must believe it.
- Q. I think there is a vast difference of opinion here between the witnesses. I think that may be cleared up later on.
- A. Well, I don't want to be insulted. I heard the Pt. Reyes whistle and you cannot say I didn't.
- Q. I say that your method of identification is very indefinite.
 - A. I am not coming here to be insulted.
- Q. I think you had better withdraw your suit then. You asked me a question and I answered it.
- A. I am astonished to hear you say I never heard it at all. That is the most astonishing question I ever heard tell of.
- Q. Then explain to us how you knew it must have been reduced from 70 to 35 seconds and therefore must have known it was Pt. Reyes?
- A. I said I knew it was Pt. Reyes, I had the soundings and I had the Pt. Reyes whistle, although it was changed. It could not be anything else.
- Q. You just had one sounding of 29 fathoms? [1001—877]
 - A. I had more soundings—less than 30—but how

many of them I don't know.

- Q. You are very sensitive to the suggestion, are you not, Captain, that you might be telling an untruth?
- A. I am telling the truth and nothing else but the truth.
- Q. I know, but I say you are very sensitive to that suggestion?
- A. Yes, because when a man believes I am lying I feel sore about it.
- Q. You would resent that very much, wouldn't you, if a man did it seriously?
- A. I don't want to have anybody believe that I am lying.
- Q. Captain, will you take the parallels and draw a line from the Pt. Reyes whistle which will be south 15 west magnetic.

(The witness does as directed.)

- Q. What was the tide on this day, Captain, when you passed there—was it high?
 - A. About high tide, yes.
- Q. That would take 4 feet off the markings, would it not? These markings on the chart mean low tide?
 - A. Yes.
- Q. So that high tide would make about 4 feet difference?
- A. It will be 5 feet more; the soundings would show about 5 feet more than the sounding on the chart.
- Q. So that a reported sounding of 35 fathoms would be about 34 fathoms on the chart?

- A. About that, yes.
- Q. Now, find me the 34-fathom point, about where it ought to be on this line you have just drawn from Pt. Reyes, which line I will mark "A R."

Mr. McCLANAHAN.—You want a 34-fathom marking anywhere on the line?

Mr. DENMAN.—Q. (Intg.) As nearly as you can fairly and honestly make it to Pt. Reyes, Captain? [1002—878]

- A. Well, it may be close up to the bank; it is very hard to say.
- Q. But you said that those soundings go gradually, the bottoms go gradually?
- A. Soundings on the chart are a mile apart and no one can tell exactly what is between the soundings. It is the same as looking down town; you look a mile and you may get a lot of difference in the soundings if you think the bottom would be the same.
- Q. We will call that point "D"; this point "D" is about a fair marking on the chart for 34 fathoms, is it not?
- A. Well, if it was only one sounding—of course, we have to have succeeding soundings to find our position.
- Q. Draw a line on there due north and south which would indicate the line you were on, the whistle bearing, at 3 o'clock?
 - A. (Witness does as directed.)
 - Q. That line cuts the 34-fathom line on there?
 - A. Yes, just about.

Mr. PAGE.—You have not identified that line.

Mr. DENMAN.—We will call that line "B R."

- Q. How near to the 30-fathom bank line would you care to put the 34-fathom mark on that line?
 - A. It is hard to say.
- Q. Well, do it fairly, Captain. I just appeal to your own sense of fairness.
- A. You know by doing that, Mr. Denman, it is very hard to have the course you steer.
- Q. I want you to put the sounding down. Suppose you have three soundings. You know what I have in mind, Captain, of course? A. Yes, I do.
- Q. Now I ask you to be fair and I ask you to put a line down there that would be a fair representation of the 34 fathoms [1003—879] you got at 3 o'clock.
- A. Well, it is very hard to say. It may be there, it may be there, or it may be there (pointing). As I said before, when we commence to plot our sounding, we always take the course we steer and also take the soundings at the same time, the distance apart between each sounding.
- Q. We will mark that "E." Now please draw on there a line for 2:50 o'clock.

Mr. McCLANAHAN.—A line from where?

Mr. DENMAN.—A line from the Pt. Reyes whistle at 2:50 o'clock?

- A. You want the bearing I had when I was abeam, don't you?
 - Q. Yes.
 - A. (Witness does as directed.)

- Q. We will mark this line "C R."
- Q. Now, Captain, put on there about where you could fairly mark 34 fathoms?
- A. That would be across in there I should say, although it is hard to say without drawing the course. You have to draw the course when you take the soundings. If he reported, for instance, 35 fathoms it may be a little over or it may be a little less. He does not take the feet into consideration.
 - Q. He takes the nearest fathom, does he not?
 - A. He takes the nearest fathom, yes.
- Q. We will mark that "F." Now you notice that "E, D and F" are not on a straight line, are they?
 - A. I can get them on a straight line.
 - Q. I say they are not on a straight line?
 - A. Not as I marked them.
- Q. But you have three whistle bearings now and three soundings, have you not? A. Yes. [1004—880]
- Q. Of course, in order to fairly determine the whistle bearing you would have to take into consideration the soundings, would you not?
 - A. Well, I would, yes.
- Q. To locate your vessel you would have to do that, would you not?
 - A. I did take the soundings into consideration.
- Q. But I am just asking you a theoretical question. I say you would have to, would you not?
 - A. Yes.
- Q. And the three soundings and the three whistle bearings you would have to take into consideration

San Francisco & Portland Steamship Co. 1181 (Testimony of Olaf Lie.)

—the soundings—to locate your vessel, would you not?

- A. And the distance run. That would be just as good. I don't need the soundings if I have the distance run.
- Q. But the distance run is modified by currents and by the roughness of the sea and all that sort of thing, is it not?
- A. Yes, but I want to say that it is impossible to take soundings so far apart. I would rely upon the distance run, just as good as the soundings.
- Q. If the soundings should show up differently from your distance run—it is fair to presume there may be something wrong in the report of the distance run, is it not?
- A. There is very little difference in it. If it would be a serious difference in it of course we would have to depend upon the soundings.
- Q. Because the soundings are the things that are fixed quantities, are they not?
 - A. Certain fixed quantity, yes.

Mr. McCLANAHAN.—Mr. Denman, will you please let the witness answer the questions fully. He gets half way through and you interrupt him. Now, just as an accommodation to me and to the witness, please let him finish his answer. I don't know what he is going to say, and nobody else does, but he [1005—881] is interrupted so often that I have to make this objection.

The WITNESS.—You see in taking soundings it is a good aid to navigation, not to run ashore, but it

depends a great deal on how far the soundings are apart, the accuracy of the soundings, and you can find them so that you can with safety navigate your ship.

- Q. Do you recollect what you stated before the inspectors? I will read it:
 - "Q. How did you judge by the lead when the lead was not on?
 - A. On the depth of the water.
 - Q. According to that you worked in on those soundings until you got from one to the other and checked off on your chart and knew just exactly where you were?

 A. Yes, sir."
 - A. Yes, sir.
- Q. Now, draw course south 65 east through those three soundings that you have there, Captain, as fairly as you can do it. Don't put it right over the bank, put it a little bit out.
- A. I will put it across the bank. You have to take the most soundings—if, for instance, you have a certain amount of soundings, you cannot depend upon one, you have to take the most of the soundings which correspond.
 - Q. Now, that is fair, is it not, now (indicating)?
 - A. Yes, it is fair.
 - Q. Now draw it out to the Light-ship.
 - A. (Witness does as directed.)
- Q. Now, this course that you call fair, is the course—Captain, I think you are a little off on that, I won't quite agree with you on that.
 - A. You have to go back to the compass.

San Francisco & Portland Steamship Co. 1183 (Testimony of Olaf Lie.)

Q. Yes, go back to the compass. I will take it just exactly; now just look. [1006—882]

A. Well, it must have been moving; it is just the

break of the pencil inside.

Q. Well, we can fix that all right, Captain. Just do that again. A. (Witness does as directed.)

Q. This line you refer to as a fair determination of your course by whistle bearings and soundings is marked "F L," is it not?

A. The soundings that were taken that were reported in the evidence by one of the officers; but that is not based on the soundings I had aboard the ship.

Q. But you just testified you had no soundings

subsequently to 2:50?

- A. I did not say I did not have the soundings. Perhaps I have mistaken that sounding—if one officer said he had 35 fathoms, I understood he had 29 fathoms. That was reported to me aboard the vessel.
- Q. And don't you know that the man who reported to you testified that he left the sounding place at 2:45 and was relieved at that time?
 - A. He did not say that to me aboard the ship.
- Q. No, but he testified to that under oath, before you and the rest of us, when his deposition was taken? A. Yes, I think he did.
- Q. And subsequently to that you put into the evidence here an exhibit which did not take into consideration the 35-fathom soundings, did it?
 - A. I don't understand that.
 - Q. You remember putting in an exhibit here,

your first exhibit—in which you showed a course off the Pt. Reyes Light-ship; you recollect that, do you not? A. Yes, sir.

- Q. And in that course you did not take into consideration the 35-fathom soundings which were sworn to in your presence by your officer?
 - A. No. sir.
- Q. You ignored the 35 fathom sounding in giving your exhibit [1007—883] into the court?
- A. I did, but it is practically the same; it is only 3 or 4 ship-lengths difference inside there.
- Q. Well, we will see about that. What is the fair distance between F and E? Put it fairly on the line, Captain.
 - A. That is about as fair as it can be.
 - Q. Yes, that is about right. What is that?
 - A. Well, a mile and an eighth.
 - Q. It is nearer a mile and a quarter, is it not?
 - A. Well, let us say a mile and a quarter.
- Q. How long did it take you to travel that mile and a quarter? A. 10 minutes.
 - Q. How many knots is that per hour?
 - A. That is about $7\frac{1}{2}$.
- Q. Now, if you were butting into a northerly current there, you would have to be going still faster, would you not, to cover that distance?
 - A. Well, if it was a current against us, yes.
- Q. Now, let me ask you: this course as shown by the compass-bearing and soundings takes you whereabouts with reference to the Light-ship, how far from the Light-ship?
 - A. This course (indicating)?

Q. According to the whistle-bearings and soundings that you have drawn here for me, where does that take you with reference to the Light-ship?

A. About 21/2 miles to the southward of it.

Q. You had no special reason, had you, Captain, for drawing your course for the Court on a chart that had no soundings on it?

A. No, sir, absolutely not.

- Q. Absolutely none? A. No, sir. [1008—884]
- Q. Although you would navigate your ship on a chart that was smaller even than this chart that I have here at present?

A. Yes, a little smaller than that. I should say

that the scale would be about half of this.

Q. The point "D" is farther to the southward of Pt. Reyes than the line of course you have drawn?

A. It is because I put the points in just approximately before I drew the course.

Q. It is on that line where the point "D" is that you were at 2:55? A. Yes, about that.

Q. And you were about at the point "E" at 3 o'clock? A. Yes, sir.

- Q. Now, draw a line from the point "E" to the Pt. Bonita siren, just a straight line?
 - A. (Witness does as directed.)
- Q. Presuming now that you were on a course and your vessel was pointing in a direction south 65 east at the point "E", at what angle to your port was the whistle at Pt. Bonita? A. 23 degrees.
 - Q. And when you had traveled as far as that was

away, how many miles from your ship would that whistle have been, approximately?

- A. I didn't catch that.
- Q. How far was that whistle off your course if you had continued it?
 - A. You mean until we were abeam of it?
 - Q. Yes. A. About 10.
 - Q. You mean 10 miles? A. Yes, sir.
- Q. And you didn't know until 3:10 whether or not the whistle that you heard in front of you was a whistle from there or from a ship?
- Mr. McCLANAHAN.—I object to the question upon the ground that it has been answered a dozen times in the case already. [1009—885]
- A. I did not know because I did not have the chart photograph in my head.
- Mr. DENMAN.—Q. You thought, although you were going 2½ miles outside the Light-ship—
 - A. (Intg.) I didn't know at that time I was.
- Q. Then you did not know where you would land on the course you must have taken from your soundings?
- A. I know the soundings that were reported to me up to that time, which is only a quarter of a mile inside, or a little more, that it would land me around the Light-ship if I would continue.
- Q. Captain, there is nothing very clever in my discovery of this, is there? You do not consider it so, do you? A. No.
 - Q. You knew all this before you came into court? A. I never thought of it.

San Francisco & Portland Steamship Co. 1187 (Testimony of Olaf Lie.)

Mr. McCLANAHAN.—What do you mean—discovering what?

Mr. DENMAN.—Q. Then you never checked up on your soundings when you made the exhibit you introduced into court?

A. I never looked at the evidence of the officers at all.

Q. But you were present when it was taken?

A. Yes, but I never took any notice of it because I built upon what I experienced on the bridge, I never built upon anything that was said after I came ashore.

Q. If you built up on your experience not on shore you were only a mile and a half from Pt. Reyes at the time you passed? A. Yes.

Q. Now you found you made a mistake in that, did you not, by subsequent examination?

A. Yes, sir. [1010—886]

Q. It was not your experience on the bridge that discovered that mistake, was it?

A. I did not discover that on the bridge because, as I said many times, the soundings to me were reported to be on the bank and 29 fathoms were aboard. That I think has been said so many times that I think it is enough now.

Q. I am now talking about the thing you made up for the Court when you discovered that there were no soundings.

A. I never paid any attention to that at all; I don't think I looked at it. Perhaps I looked at it.

- Q. You did not have to look at it to hear the man say that from 2:45 until 3:10 he had nothing but 35 fathom soundings? A. He said so.
- Q. If you had noticed it you would have considered it important, would you not?
 - A. I would not have considered it important.
 - Q. You would not?
- A. I never thought of that at all because I don't think that has anything to do with the collision and therefore I didn't thing of it—absolutely.
- Q. Don't you think the course you were sailing on had anything to do with the collision?
 - A. I don't think so.
- Q. And you don't think the distance that the vessel travelled after she left Pt. Reyes has anything to do with it? A. I don't think so.
- Q. And you don't think the point of collision has anything to do with the case?
- A. No, I don't think it has anything specially to do with it except that my vessel was there, that is all. I wanted to show that my vessel was there—it was for nothing else.
- Q. We admit that your vessel was there and regret it exceedingly, Captain. According to the whistle-bearings and soundings [1011—887] then, you had covered a distance that showed you were going at the rate of about 7½ miles an hour?
- A. The log showed 6. That was logged from 1 o'clock carefully by one of the officers. We did not rely anything at all upon any quartermaster; the

chief officer had the orders to take the log.

- Q. Don't you think it is just possible Captain, that the following sea helped you some?
 - A. Absolutely not.
 - Q. All right. Let me ask you in that connection-
 - A. (Intg.) The log would show that.
- Q. You remember the testimony here to the effect that the log came home?

A. No, sir, I never said that the log came home,

absolutely not.

- Q. Then you mean to say that the following sea would not carry the log along as fast as the vessel?
 - A. It would be the same in proportion.
 - Q. It would be the same in proportion?
 - A. Yes, sir.
- Q. So that the following sea might have added this knot and a quarter to your rate here, although the log would not show it?

A. I don't know. I don't think that is right. You cannot base you speed upon two soundings like that.

Q. There are three soundings, are there not, and

three whistle-bearings?

A. Yes, that is right enough, but this short distance—only 10 minutes—you have to run very long. If you are a quarter of a mile out, or if you are 2 degrees out in the bearing, say 2 degrees out in the bearing, which is practically nothing, on that chart there it will make over a knot an hour.

Q. So that your whistle-bearings—the difficulty in determining will make all that difference in your

(Testimony of Olaf Lie.) calculations, [1012—888] will it?

- A. When I said I take the sounding of a whistle, I do not mean to say I could take it on an exact degree; it may be one degree on either side—one degree.
 - Q. Or perhaps 2 degrees? A. Perhaps 2.
 - Q. Or perhaps a point?
 - A. Oh, no, not a point, absolutely not.
- Q. Such a thing could not happen as was described by your countryman here at that meeting in Washington, that the whistle would come from the port side and you would hear it on the starboard side—that could not happen?
 - A. No, that could not happen that way I am sure.
 - Q. There was a heavy fog that day, was there not?
 - A. There was a heavy fog, yes, sir.
- Q. And you say the fog had been lifting and falling?
 - A. In the afternoon it was pretty nearly steady.
 - Q. And the sun was shining through? A. Yes.
 - Q. I thought you said the fog had thinned out?
- A. It thinned out a little at one o'clock, but it kept about the same all afternoon. It was thicker in the forenoon, but it thinned out about noon.
- Q. It was thick down on the water but thin up above—is that it? A. That is it, about that.
 - Q. In other words, a low thick fog?
 - A. Yes, sir. Now, another thing is-
- Q. (Intg.) Now, just a moment, Captain. You let your counsel bring out your testimony. So you don't place any great reliance on the accuracy of

whistle-bearings and soundings for locations but you prefer to take your log run and whistle-bearings?

A. I take it all into consideration, but you take now and say if I took a bearing and found that that was one-eighth [1013—889] or a quarter of a mile in the bearing and you convert that in the day you will get a long distance. In an hour you will get over a knot. That does not mean to say you can find the speed of the vessel with two bearings within 10 minutes.

Q. This is three bearings.

A. Well, say three bearings within 10 minutes. It is impossible to say how much a ship would travel in an hour on these two bearings. If I got these two bearings and travelled a mile in between them I would say they were pretty accurate bearings, although it would show on the chart a little over a mile. But that does not say that the ship was making $7\frac{1}{2}$ knots—absolutely not.

Q. But in so far as you could determine it from your whistle-bearings and your soundings as you have them here, you were making 7½ knots?

A. Well, according to that.

Q. Well, this is the same calculation as your other chart that you put before the Court shows, except you reversed the process, omitted your soundings entirely and relied upon the distance run?

A. I don't think that chart showed exactly a mile from 3 o'clock; it showed about that, I think.

Q. Well, the exhibit is here, I presume. Don't you know, Captain, that it only marks a mile and you

- A. Not the distance run up to that time. This is the chart—
 - Q. (Intg.) Answer the question, is that correct?
 - A. Let me see.
 - Q. Didn't you mark it in feet?
 - A. I marked it a mile.
- Q. And you went to the point of 6080 feet, did you not, and it is correct?
 - A. Yes, that is the way it stands here.
- Q. Well, you would not put it down with that accuracy when it was only approximately 6,000 feet, would you, Captain? [1014—890]
- A. Well, it happened to be a mile and I put it into feet. A mile is 6,080 feet. I would not say it is absolutely in feet. You see that is not a mile; it should be a mile but it is less than a mile.
 - Q. Why should it be a mile?
 - A. Because we run a mile on the log.
- Q. So that you made up that calculation from the run on your log? A. Yes, sir.
 - Q. Exactly?
- A. No, absolutely not, because the First Officer took the bearing on my orders, and that is just put down according to his bearing.
- Q. So it is on what you thought the location ought to be, taking the bearing and the distance run reported to you—that is the way you made it up?
- A. The Chief Officer took the bearing. I ordered him to take the bearing to show if it was any different between that and my bearing, and then he

said the light was about north; that is what he said. He did not say it was absolutely north. He said it was about north. I did not get time at that time to go in and lay that off. I laid it off after I came ashore.

- Q. What is the distance that you ran between 2:50 and 3 P. M. as it is shown by the points on Libelants' Exhibit No. 1. Just mark how it is—you can get it over here (indicating).
 - A. It is fifteen-sixteenths.
- Q. So there are five-sixteenths of a mile difference between the course as shown by the whistle-bearings and your log, and the course as shown by the soundings and the whistle-bearings—is that correct?
- A. Yes, by the soundings given by the second officer; five ship-lengths out. [1015—891]
- Q. You mean there are five ship-lengths difference in the period of 10 minutes. That is correct, is it not? A. Yes, sir.
- Q. Five ship-lengths and five ship-lengths make up how much? A. That is five-sixteenths.
 - Q. And five-sixteenths is what?
 - A. That is about one and a quarter.
 - Q. It is five-sixteenths of a knot? A. Yes.
- Q. That is in 10 minutes. That is thirty-six-teenths in an hour, is it not? A. Yes.
- Q. That is a knot and seven-eighths difference in the time, is it not, in an hour; is that correct?
 - A. Yes, that is correct.
- Q. So that the chart as drawn by you on whistlebearings and soundings differs and shows a differ-

ence in the rate of speed of one and seven-eighths knots an hour from the chart drawn on whistle-bearings and log; that is correct, is it not?

- A. That is taking the last two bearings, yes, if you take it that way.
 - Q. Now, let us figure on the rest of the bearings.
 - A. What bearing do you want?
 - Q. Take south 60 east from "F."

(The witness does as directed.)

- Q. Now, show us, Captain, where you were when you had the 29 fathoms?
- A. Well, on this chart it would be any of—if you draw on the soundings here it would be at 2:35.
 - Q. At 2:35? A. Yes.
- Q. Now, Captain, the line "F. M" is the line south 60 east? A. Yes, sir. [1016—892]
- Q. And that is the course you were on before you turned to south 65 east? A. Yes, sir.
- Q. According to the course as checked out by your soundings and your whistle-bearings, how far were you from the Pt. Reyes whistle when you were abeam? A. About 2 miles.
- Q. And that, of course, is hitting the 34-fathom sounding right on the 30-fathom line, is it not? You put your divider right on the line, did you not, practically on the line—that is correct, is it not?
- A. What do you mean? I put it right there (indicating).
- Q. Oh, yes, I see. Captain, you have got on my nerves, I don't seem to be able to hold this.

San Francisco & Portland Steamship Co. 1195 (Testimony of Olaf Lie.)

- A. Well, it is a little slack. Where are you checking it?
- Q. I am checking it from the whistle. It is about 2 miles and something, is it not?
 - A. 21/8; it is more than 1/8—well, 21/8.
- Q. Yes, 21/8 is right. How far did you find in the log you were from Pt. Reyes when you passed it?
 - A. One and $\frac{1}{2}$.
 - Q. 11/2 miles?
 - A. Yes, that is about right.
- Q. What would be your sounding at one and $\frac{1}{2}$ miles?

Mr. McCLANAHAN.—Do you mean the sounding as shown by the map, or the actual sounding when you take into consideration the tide?

Mr. DENMAN.—I mean the sounding as shown by the map.

- A. I would like to say that I took the mile and a half just from the edge of the land.
- Q. Do you remember the question being put to you—
- A. (Intg.) Well, it doesn't make much difference, it will be from the light; it will be there. It does not show any [1017—893] sounding on the chart.
- Q. How far is that from the point drawn by your course as drawn by the soundings and the whistlebearings?

 A. Half a mile.
- Q. Now, let me take your other chart on which the soundings are figured more carefully?

Mr. McCLANAHAN.-I object to that statement

(Testimony of Olaf Lie.) going into the record.

Mr. DENMAN.—Well, I will take it back because it does not show as I stated. There are no soundings on the chart that Captain Lie offered to the Court as showing where his vessel was. Most of the drawing if off the chart entirely.

Mr. McCLANAHAN.—Well, I object to that statement. The map certainly does show some.

Mr. DENMAN.—Not these portions of the course upon which the distance from Pt. Reyes is calculated.

I want to offer this map in evidence as "Claimant's Exhibit, Captain Lie, No. 1."

(An adjournment was here taken until to-morrow, Saturday, July 29, 1911, at 10 A. M.) [1018—894] Saturday, July 29, 1911.

OLAF LIE further cross-examination, resumed: Mr. DENMAN.—Q. Captain, will you step here a moment please. Will you draw from the Pt. Reyes whistle the bearing as you say it was at 2:30 o'clock?

Mr. McCLANAHAN.—Draw it on what?

Mr. DENMAN.—On this exhibit, "Claimant's Lie No. 1"?

- A. (Witness does as directed.)
- Q. Now, mark the point of intersection with the line "M F" by the letter "I"?
 - A. (The witness does as directed.)
- Q. Now, will you give me the distance between the point "I" and the point "F"—about $2\frac{1}{2}$ knots, is it not? A. No, sir, $2\frac{3}{8}$.

Mr. McCLANAHAN.—Let the witness answer,

Mr. Denman, please; he is doing the measuring.

Mr. DENMAN.—Q. About 23/8 knots?

A. About 23/8.

Q. It is a fairly liberal 23/8, is it not?

A. It is about accurate, according to that.

- Q. So that, Captain, judging the rate at which you were traveling as estimated by your three-whistle bearings and three soundings, between the hour of 2:30 and the hour of 3 o'clock—half an hour—you must have been traveling at about the rate of 7½ knots an hour; that is correct, is it not?
 - A. No, sir, it is not correct.
- Q. What is there incorrect about it, judging from the whistle-bearings and the soundings? And I am not asking you now for [1019—895] all the data that you have, I am simply saying, judging by whistle-bearings and soundings?
 - A. You said from 2:30 o'clock.
 - Q. From 2:30 until 3 o'clock.
- A. But take the two bearings at 2:30—that is 23/8 knots in 20 minutes.
 - Q. $2\frac{3}{8}$ in 20 minutes; what would that be per hour?
 - A. That is three times as much.
 - Q. Well, what would that be? A. 6 6/8 knots.
 - Q. 23/8— A. It would be 9/8ths.
 - Q. It would be 71/8, would it not?
 - A. Yes, 71/8.
- Q. And as shown here between the second bearing, that is, between "F" and "E" on the chart, you were going at the rate of 77/8, were you not?
 - A. No, sir, I was not.

- Q. As shown by the distance between "F" and "E," based upon the soundings and the whistle-bearings you were, were you not?
- A. No, sir, that is not wrong. Let me explain—Mr. McCLANAHAN.—Q. You say that is not wrong? A. That is not right.
 - Q. You said "wrong"?
- A. I meant right. No, that is not right. Let me explain—that distance between the two bearings, at 2:50 and at 3 o'clock is not 1½, as stated yesterday; I think it is nearer 1½. If you shall convert that into an hour and take a quarter you will get too much because you have to take that exact if you want to convert it into an hour. If you measure it you will not get over 1 3/16 at the utmost.
- Q. And you will cover six times that distance in an hour, will you not? A. Yes. [1020—896]
 - Q. And six times 1 3/16 is what? A. 71/8.
- Q. So that the rate of speed as shown by three soundings and three whistle-bearings here, between the hour of 2:30 and 3 o'clock, is 7½ miles an hour?
- A. Taking the soundings. That was taken after we passed, yes.
- Q. Now, we will take the soundings as taken before you passed. You recollect the first officer testifying that you signaled to him to come up on the bridge at 2:45?
- A. I don't know what time it was. I waved my hand to him after we passed the light, after the light was passed, and about the time the light was abeam. I wanted to call him up to tell me.

San Francisco & Portland Steamship Co. 1199 (Testimony of Olaf Lie.)

Q. You recollect that he testified that your waving to him is what led to his being relieved by the other officer at 2:45?

A. I don't think so, no. He called the second officer to relieve him before I waved my hand to him, I think. I don't think that waving my hand had anything to do with the second officer relieving him.

Q. He was taking soundings at the time you waved

your hand to him, was he not?

A. I don't remember where he was at the time I waved my hand. I could not say.

Q. You cannot recollect that?

A. I think he had left the poop when I waved my hand to him; I think so.

Q. Do you recollect this testimony taken in your presence at Mr. McClanahan's office:

"Q. What did you go on the bridge for?

A. Because the captain was waving his hands. I thought he saw something. I was going to find out, and I then told [1021—897] Mr. Larson to relieve me, the second officer.

Q. Then when you went on the bridge what

did you find out?

A. I heard the point signals from Pt. Reyes, which I could not hear on the poop."

Do you recollect that testimony of Mr. Halverson, the first officer?

A. No, I don't recollect it. I don't recollect now exactly that he said that.

Q. But you were there at the time this deposition was taken? A. I was there, yes.

Q. And you were the libelant in this case and you were there with your attorney, were you not?

A. Yes.

Mr. McCLANAHAN.—That appears a number of times in the record already, Mr. Denman.

Mr. DENMAN.—Well, all right.

Q. Are you in a position to say now that Mr. Halverson was mistaken?

A. No, I don't know. The only way I think he called Larsen to relieve him was because he had something to look at around the decks and—

Q. (Intg.) He says here the reason he did it was because you had beckoned to him and he then called Larsen to relieve him.

A. Well, I don't know anything about that.

Q. If Larsen testified that he took all the soundings from 2:45 on, you have nothing of your own personal knowledge to contradict him, have you?

A. No, I have not, absolutely; that is to say, I did not pay any attention to the soundings taken by Larsen at all because when the first officer came on the bridge, he came on the bridge just a few minutes after I waved my hands to him and he was on the bridge after we passed it, after we passed Pt. Reyes, and I had shaped my course; [1022—898] so the soundings I received from the first officer, I think, that he had taken himself. That is my personal opinion. He did not say anything else.

Q. So that if he had taken them himself and Larsen had taken them from 2:45 on, the soundings that he took must have been prior to 2:45?

- A. Well, that is so, if that is the truth.
- Q. And the soundings he gave you were in the neighborhood of 29 fathoms?
- A. Yes. There were several soundings less than 30 but I don't remember how many of them.
 - Q. He had several soundings less than 30?
- A. Yes, I remember that he said the least sounding he had was 28; I remember that too.
- Q. The least sounding he had was 28. But before you had received any sounding you had changed your course?
- A. Oh, yes, I had changed my course because then I had had my bearings. I did not lay them off but I had my Ft. Point bearing as well just to check up, so I would see appromixately how far I went off.
 - Q. Who was it took the first bearing?
 - A. I took the first bearing.
 - Q. What time did you take it?
- A. I took it half a minute or a minute after 2:30. I did not exactly look at the clock but I took the bearing—first I heard a whistle, I heard it between 3 and 4 points on the port bow, and then I just looked at the compass and watched for the next bearing, and that was east by north.
- Q. You remember at the taking of these depositions that Mr. Bjorn testified that when he first saw the "Beaver" on that day on your port bow, she was coming at right angles and continued [1023—899] at right angles until she struck; you recollect that testimony, don't you?
 - A. No, I don't recollect it. I have not looked over

it at all. I don't recollect it.

- Q. If that testimony was given, you heard it while you were there, did you not?
 - A. Oh, yes, I did; I was in there, of course.
- Q. Well, you were following it very closely, were you not?
- A. Well, I was sitting over in one corner. I did not pay much attention to it, to tell you the truth because I didn't think I had anything to say at all. When we have a court in Norway, if I have my declaration taken in Norway, the captain has no right to listen to his witnesses at all.
- Q. Well, you remember you sat alongside of Mr. McClanahan for a good long time?
- A. No, that was only when Hansen was being examined through the interpreter who didn't know anything about the language.
- Q. Don't you remember you sat very close to Mr. McClanahan all morning?
- A. I sat right close to the door all the time the witnesses were being examined.
- Q. But between the morning and the afternoon you as the libelant, had abundant time to see your counsel, did you not?
 - A. Yes, but I didn't refer to that-

Mr. McCLANAHAN.—I object to that question as immaterial. There must be an end to this case, Mr. Denman.

Mr. DENMAN.—All right.

Q. Bjorn was standing beside you on the bridge, was he not?

San Francisco & Portland Steamship Co. 1203 (Testimony of Olaf Lie.)

A. Yes; that is, he was not standing absolutely alongside of me.

Q. But he was near you?

A. He was near me; he was on the [1024—900] bridge.

Q. And his testimony that he saw the vessel at right angles at first and that she continued at right angles until she struck is not in accord with your testimony, is it?

Mr. McCLANAHAN.—I object to that upon the ground that the witness has not said that he recognized that as Bjorn's testimony. If you put the question in another way, for instance, if he said that then it is not in accord, I will withdraw my objection. I submit that the record shows just what he said.

Mr. DENMAN.—I will read it:

- "Q. Now, as I understand it, at 3:15 you saw the 'Beaver' coming on you at about right angles and you say she seemed to have speed on at that time? A. Yes, sir.
- Q. And she continued and finally struck you at right angles about 70 feet abaft the bow?
 - A. 70 feet abaft the bow?
 - Q. Yes. A. Yes, sir."

You recollect that testimony, do you not?

A. Well, he did not say that, you suggested it to him, didn't you?

A. Of course I suggested it to him.

A. Well, he simply said yes to that. He did not say so.

Q. You noticed I suggested it to him at the time, did you not?

- A. Well, I didn't pay any attention to it at all, I didn't think of it.
- Q. Now, if that were the case, Captain, if the vessel were seen at 3:15 at right angles and continued at right angles until she struck, your vessel must have been pointed about due south at 3:15, must she not? [1025—901]
- Mr. McCLANAHAN.—I called the attention of counsel to the fact that that is not a correct statement of the evidence; his own suggestion was "about" right angles and not "at right angles."
- A. And I think it cannot jar either because I think the second or third officer said he sighted the "Beaver" three points on our port bow and if she then was at right angles to the ship she would have passed the ship, would she not?
 - Q. Unless she turned to starboard.
- A. If my vessel was at rest she would strike at right angles.
- Q. If your vessel was also turning to starboard she would, would she not, Captain?
 - A. Yes, but my vessel was going astern.
 - Q. Your vessel went astern 100 feet, did she not?
 - A. I could not say the exact feet.
- Q. Well, about that. And your vessel you claim was turning to starboard?
 - A. My vessel swung to starboard, yes, sir.
- Q. Now, if when one vessel sighted the other they were at right angles to one another, you say there could not have been a collision unless the "Beaver" was turning to starboard and you were turning to

starboard, there could not have been a collision at the angle the collision occurred at?

A. If she appeared at right angles the first time we saw her, I mean. I cannot really understand that at all. I don't understand that at all, how it could appear.

Q. There is a pretty strong agreement amongst the witnesses that it was that way, is there not?

A. I really did not look at my ship and pay any attention to the "Beaver" with regard to the right angle. I just [1026—902] said that the "Beaver's" starboard side broadened a bit to me as she came along and I thought finally that perhaps she would go ahead of us. I was wishing it too all the time as my vessel was going astern. When I first sighted her I thought she was pointing somewhere about our amidships.

Q. How could she be pointing to your amidships if she were 2 points on your bow when you first saw her?

A. Oh, she could point that way.

Q. And what was your course at that time, according to your statement?

A. Somewhere about 55—she had really no course but she was heading that way, I should say south 55, or somewhere around there. She was a point off her course.

Mr. McCLANAHAN.—Q. Ffty-five you say?

A. Yes, somewhere around there. That is where she was heading when the "Beaver" loomed in sight, somewhere around there; I just think that.

Mr. DENMAN .-- Q. And 2 points on your bow,

(Testimony of Olaf Lie.) you on that course, the "Beaver" was pointing to your amidships?

A. Somewhere around there. I could not say exactly where it was but it was somewhere around there. She was pointing farther off than the stern.

Q. Have you figured that out, have you plotted that out?

A. No, I have not plotted it at all. That is only in my mind. I have not plotted it out at all.

Q. The "Beaver" at that time, according to all the testimony, was traveling somewhere about west, perhaps about 2 degrees above or below west, but in that neighborhood?

A. Well, about west; I could not say exactly.

Q. Captain, the chart you have prepared, Libelants' Exhibit 1, and the chart you have drawn for me, Claimant Lie No. 1, [1027—903] the bearings are drawn on the chart to the whistle itself and not to the point, are they not—on both of them?

A. Yes, sir. But the distance on exhibit 1, I think I measured the distance from the land. I did not measure it from the whistle. I measured the distance from the land. I think I did. It would not be very much different, I don't think.

Q. Now, let me ask you, Captain, the distance as shown by the whistle-bearings and soundings, on Claimant's Exhibit Lie 1, at 3 o'clock, between the Pt. Reyes whistle and your vessel is what—it is 2 and what? A. 2\% knots.

Q. You get, I believe, on your own calculation 1\%?

A. That is from the land, but it will be 2 miles

(Testimony of Olaf Lie.) from the light, I think; I think it would, approximately.

Q. Well, let us see, Captain. A. It is 17/8.

Q. What is the distance you get from the point "F" to the light, Captain?

A. 21/8. And on my exhibit it is 13/4 from the light.

Q. What did you state in your original log as to the distance?

A. 1½. That is as near as I got it. I did not look at any chart when I made that log up. That is the distance I had roughly on the chart, 1½ miles, when I was on board the ship.

Q. Do you recollect testifying anything about the effect of the sea being astern on your vessel, while before the United States Inspectors?

A. No, I don't recollect that I said anything about it, no.

Q. You don't recollect that you said the sea being astern would have any effect on your stopping,—before the United States Inspectors? [1028—904]

Mr. McCLANAHAN.—Call his attention, Mr. Denman, to the specific evidence; that will be the fairer way to get at it.

A. I don't exactly remember it.

Mr. DENMAN.—Q. Do you recollect this:

"Q. Was your ship dead in the water at that time?

A. I was looking over the side. She had little headway. The sea was astern, and she had headway and I did not want to blow two whistles

before she was done."

Do you recollect that testimony?

- A. Well, I don't really recollect I said so, but if it is there I might have said so. I would like to explain a little about this, could I?
 - Q. Yes, go on and explain.
- A. You have referred to the testimony so many times. You must remember that I am not as good to explain myself in the English language I ought to be, and you know many times you put in a word which really is not as good as it ought to be. And so many times you have referred to this testimony—the man who took it down sat across the table and he might not have caught what I said exactly.
- Q. Captain, don't you know you speak English perfectly, that you enunciate it perfectly, and that you have been the marvel of every man who has listened to you?

Mr. McCLANAHAN.—Not on the subject of English. The marvel of Captain Lie is in his memory of these things.

Mr. DENMAN.—I want to say that every man who has listened to Captain Lie has marvelled at his English and his diction.

Mr. McCLANAHAN.—Well, that is a remarkable statement. Captain Lie does speak English imperfectly, according to my knowledge. [1029—905]

Mr. DENMAN.—I don't think this record will bear you out in that statement.

Mr. McCLANAHAN.—Yes, it will. There is an example of that in the record this morning when he

said "wrong" when he meant "right"; I corrected him on it, and the record shows it.

Mr. DENMAN.—If you want to assert that Captain Lie has that slight knowledge of the English language, while it might be true this record does not show it.

Mr. McCLANAHAN.—I want to assert that Captain Lie often uses unhappy expressions to express himself.

Mr. DENMAN.—Well, that might be true too.

Q. I will read this again to you:

"Q. Was your ship dead in the water at that time?

A. I was looking over the side. She had little headway. The sea was astern, and she had headway and I did not want to blow two whistles before she was done."

Can you explain that on any basis of a want of knowledge of the English language?

A. No, I may have said, I may have put that in; if it is there I might have done so. The inspectors you know might as well have jumped at me at these questions, and it seems to be they wanted me to blow two whistles as soon as I stopped my engines and I told them I was not allowed to do that according to the rules of the road.

Q. Will you kindly take the record and show where the inspectors jumped you after that? There is the record (handing). A. Well, he said once—

Q. (Intg.) Just take the record and show at that point where they jumped you.

A. The record does not show any jumping. It shows once when Mr. Bulger said "when your engines are stopped the ship is virtually stopped." [1030—906]

Q. That was 5 minutes later, was it not, as the record shows?

A. I don't think the record shows how many minutes it was.

Q. Who was interrogating you at the time this question was asked you—do you know?

A. I don't know; I don't remember.

Q. It was Mr. Bolles, was it not?

A. I don't know; I don't remember.

Mr. DENMAN.—Mr. McClanahan, will you admit that the record shows that?

Mr. McCLANAHAN.—I don't see the materiality of it.

Mr. DENMAN.—Well, will you admit that at the time this question was asked—

Mr. McCLANAHAN.—What question are you referring to? I did not hear you state any question. You read an answer but I did not hear any question.

Mr. DENMAN.—This was the question:

"Q. Was your ship dead in the water at that time?

A. I was looking over the side. She had little headway. The sea was astern and she had headway and I did not want to blow the two whistles before she was done."

Will you admit that was a question put by Mr. Bolles before any questions were put by Mr. Bulger?

Mr. McCLANAHAN.—I will take your word for it if the record shows that.

Mr. DENMAN.—The record does show it.

Mr. McCLANAHAN.—We will not dispute it although I fail to see its materiality.

Mr. DENMAN.—Will you admit that there were at least 25 or say 20 questions asked by Mr. Bolles before Mr. Bulger spoke to Captain Lie, after that question? [1031—907]

Mr. McCLANAHAN.—I fail to see the materiality of the requested admission, but if the record shows that, and you say it does, I will make the admission.

Mr. DENMAN.—The record does show it.

Mr. McCLANAHAN.—You are prolonging this examination so, Mr. Denman, that I am going to excuse my witnesses until Monday.

Mr. DENMAN.—I will be through in probably 5 minutes.

Mr. McCLANAHAN.—Well, I will have one witness here for you.

Mr. DENMAN.—Q. Captain, did you tell the officer on the bridge with you, that the vessel was going a little ahead because there was a heavy swell from astern?

A. I don't think I told the third officer about that; he was on the bridge and he knew the way it was.

Q. Did you tell him that?

A. I don't think I did.

Q. Do you recollect his testifying in your presence before the United States Inspectors as follows:

"Captain said he is going little ahead because

there was heavy swell from astern."

- A. I did not say that to him.
- Q. Do you recollect his testifying to that before the United States Inspectors?

Mr. McCLANAHAN.—I submit that the answer of Bjorn does not necessarily say that Captain Lie said it was because there was a heavy swell astern.

A. (Continuing.) I could not exactly recollect it now at this time but if the record says it I expect he said so.

Mr. DENMAN.—You will take my word for it, Mr. McClanahan, that the record shows it? [1032—908]

Mr. McCLANAHAN.—Why, yes, if it is material.

Further Redirect Examination.

Mr. McCLANAHAN.—Q. Captain Lie, on this very extensive further cross-examination of you, and with reference to Libelants' Exhibit 1 there appears to be a discrepancy between the actual measurement of distance between the "Selja's" position at 2:50 and the "Selja's" position at 3 o'clock, and the amount in feet shown on your exhibit. Do you understand what I mean?

A. I think I understand.

- Q. In other words, the exhibit shows that the distance between the point at 2:50 and the point at 3 P. M., is 6,080 feet, and when you scaled that on the map it did not scale 6,080 feet—is that correct?
 - A. No, it did not, I think I got a little less.
- Q. Now, Captain, will you please explain, if you can, that discrepancy in distance:
 - A. Well, I would like to just say that this chart,

or Exhibit 1, is only based entirely upon the first two bearings taken by me; that is to say, the bearing I had east by north, at 2:30 and abeam at 2:50; the distance run by the log showed two miles, and the distance off that Pt. Reyes is fixed thereby. Now, up to 3:10—up to 3 o'clock, I mean—we also ran a mile by the log exactly, but at that time the first officer took a bearing off the Point.

Q. At what time?

A. At 3 o'clock. Now, the distance put down here between these two bearings—

Q. What two bearings?

A. At 2:50 and at 3 o'clock is exactly what the log showed, but the distance between the bearings shows a ship-length less.

Q. As shown by the bearings themselves?

A. The bearings themselves—that is all. Because I did [1033—909] not alter the bearing. I took the bearing as the chief officer gave it to me and plotted it on the chart, and it shows the distance between the two bearings at 2:50 and at 3 o'clock is a ship-length less than the log showed.

Further Recross-examination.

Mr. DENMAN.—Q. The course shown on that map between 2:50 and 3 o'clock does not show soundings on the chart of 34 fathoms, does it?

Mr. McCLANAHAN.—I object to that. The map shows for itself.

Mr. DENMAN.—The map shows no soundings at all.

Mr. McCLANAHAN.—Exactly. I say it speaks

for itself. Now you are asking him if the map shows any soundings.

Mr. DENMAN.—I mean the soundings shown by the United States map covering that distance that we have in evidence here.

Mr. McCLANAHAN.—We will admit that the soundings are not on this map at that point, on the map Libelants' Exhibit 1.

Mr. DENMAN.—Now, just repeat my question, Mr. Reporter.

(Question read by the Reporter.)

A. It does not show any soundings on that chart.

Q. That course does show that you were well inside of the 30-fathom curve on the smaller map of that district, does it not?

Mr. McCLANAHAN.—I object to that as calling for the conclusion of the witness. The map speaks for itself. It is improper recross-examination.

A. It shows that it is a little inside of the curve, yes.

Mr. DENMAN.—Q. About a half mile distance, is it not?

Mr. McCLANAHAN.—The same objection.

A. I think it is about three-eighths; I think it is, somewhere about that. [1034—910]

Mr. DENMAN.—Q. And that three-eighths of a mile is to the nearest point where conceivable you could find 34 fathoms?

Mr. Mr. McCLANAHAN.—I object to that as improper cross-examination.

A. The chart does not show any sounding at all.

It is only guesswork to say if it is 34, or anything else, because the chart, as I say, does not show any soundings.

Mr. DENMAN.—Q. It shows the 30-fathom curve, does it not?

A. It does, approximately.

Q. Is it your theory that the 30-fathom point marks the point where the bottom of the sea drops 4 fathoms?

Mr. McCLANAHAN.—That is objected to as improper recross-examination.

A. It may, sometimes.

Mr. DENMAN.—Q. Do you mean to say it shows all the way around, the drop at that point?

A. It may because sometimes they drop more than 4 fathoms, sometimes they drop 7 or 8 or 10 fathoms on the bank.

Q. You think that 30-fathom curve represents a bank, do you?

Mr. McCLANAHAN—I object to the question as not proper recross-examination.

A. It represents shallow water, yes.

Mr. DENMAN.—Q. Does it not merely represent a point where the gradual shallowing bottom has dropped to 30 fathoms?

Mr. McCLANAHAN.—That is objected to as improper recross-examination.

A. Nobody can tell.

Mr. DENMAN.—Q. That is the way you read the chart here, is it?

A. It depends on where the sounding was on the

chart. If the soundings are too far apart and it shows [1035—911] great difference, then nobody can say what is between the other soundings, before you take and sound it yourself.

Q. If you should find the 30-fathom curve, and the first sounding outside that curve in a certain direction was 34 fathoms, would you or would you not expect the bottom to gradually deepen from 30 to 34 fathoms?

Mr. McCLANAHAN.—I object to the question as being improper recross-examination.

A. I could not expect anything.

Q. You could not expect anything?

A. I might have dropped the lead on something higher and away from there it made 3 or 4 fathoms difference. It is hard to say.

Mr. DENMAN.—Mr. McClanahan, I understand that the data is in Washington covering this entire territory, and they are very closely plotted soundings. If my information which I have recently received is correct we will offer, either at the trial, as a matter that the Court can take judicial knowledge of, or to reopen the case to put those soundings in.

Mr. McCLANAHAN.—I will say, in reply, that you may make your offer at the appropriate time and let the Court pass upon it.

Mr. DENMAN.—That is all.

Mr. McCLANAHAN.—I understand now that the respondent rests?

Mr. DENMAN.—Yes.

San Francisco & Portland Steamship Co. 1217 (Testimony of Mrs. Johanne Lie.)

Mr. McCLANAHAN.—We will call Mrs. Lie. Libelant is now offering rebuttal evidence. [1036—912]

[Testimony of Mrs. Johanne Lie, for Libelant (in Rebuttal).]

JOHANNE LIE, called for libelant in rebuttal, sworn.

Mr. McCLANAHAN.—It is understood that Mrs. Lie has been sworn by the Commissioner through her husband acting as interpreter?

Mr. DENMAN.—Yes.

Mr. McCLANAHAN.—And now I ask that you waive the oath of Mr. Andreas Bjolstad as interpreter.

Mr. DENMAN.—Oh, yes.

Mr. McCLANAHAN.—Q. Mrs. Lie, what is your full name?

A. Johanne Lie.

Q. You are the wife of Captain Olaf Lie, former master of the "Selja," are you? A. Yes, sir.

Q. You were on board the "Selja" at the time of the collision with the "Beaver" A. Yes, sir.

Q. Do you remember, Mrs. Lie, rescuing a man who had fallen into the sea from one of the "Beaver's" boats? A. Yes, sir.

Q. Where were you at the time you rescued the man?

A. Just alongside the steamer "Beaver."

Q. In one of the "Selja's" boats? A. Yes, sir.

Q. After you had rescued the man from the sea, did he get into your boat? A. Yes, sir.

(Testimony of Mrs. Johanne Lie.)

- Q. Did you notice whether the man had been drinking, or not?
 - A. I noticed a strong odor of liquor.
- Q. From the breath of the man whom you had rescued? A. Yes, sir.
- Q. How close were you at that time to the man that you noticed his breath?
- A. He was placed just at my side in the boat. [1037—913]

Cross-examination.

Mr. DENMAN.—Q. How long had he been in the water?

- A. I cannot say.
- Q. How long had you seen him in the water?
- A. I saw him just as he came past the boat.

Redirect Examination.

Mr. McCLANAHAN.—There is just one question which I omitted to ask on the direct: did he say anything to you as you pulled him into the boat, Mrs. Lie?

- A. He said, "Help yourself, lady."
- Q. Is that all? A. Yes, that is all he said.

Mr. DENMAN.—Mr. McClanahan, will you admit that the record before the United States Inspectors. shows that Captain Lie, in response to the following question: "How were you heading when you saw the other ship? Do you recollect"? answered We were off the coast. The third officer was logging south 65 east magnetic. The moment she struck I should think he came ¼ of a point south. His wheel was on starboard quarter."

San Francisco & Portland Steamship Co. 1219

(Testimony of David W. Dickie.)

Mr. McCLANAHAN.—I make that admission. I understand you want it for the purpose of applying it to Captain Lie's examination on that point?

Mr. DENMAN.—Yes.

[Testimony of David W. Dickie, for Libelants (Recalled in Rebuttal).]

DAVID W. DICKIE, recalled for libelants in rebuttal.

Mr. McCLANAHAN.—Q. Mr. Dickie, since the examination of your father, and of Mr. Heynemann and yourself, and on the respondent's case, a correction has been made as to one of the items of data upon which your hypothetical questions were based. [1038—914] Do you remember that it was stated to you that you were to assume that the "Beaver" on her trial trip made 17.6 knots per hour? Now, that has been corrected by Mr. Frey for the respondent and it should be 17.06. Now, I hand you Respondent's Exhibit No. 1, which is a copy of the questions put to the experts that I have named, and I will ask you which of those questions that change in the data affects, giving the numbers of the questions.

A. That affects the answer to question No. 16, Question No. 17,—it makes a slight correction—

Q. (Intg.) Never mind stating the extent of the change now; just state what answers must be changed. You say 16 and 17. What is the other?

A. It affects the answer to question 16, 17 and 27, and makes corrections in questions 18, 19 and 21.

Q. Take question 16 as the first one that is affected

(Testimony of David W. Dickie.)

by the change in the data; what was the original answer to that?

- A. The original answer to that was 6.794 per cent. The new answer would be 9.654 per cent.
- Q. Now, take question 17 and make the appropriate changes in that.
- A. To question 17 the original answer was 15.76 knots; the new answer will be 15.275 knots.
 - Q. Now, take question 27.
- A. To question 27, it is possible but not probable. The previous answer was "no."
 - Q. Now, take question 18.
- A. The answer is not affected but the first line of the question should read: "If the slip of her propeller was 9.654 per cent, making 17.06 knots," instead of "if the slip of her propeller was 6.79 per cent, making 17.6 knots." [1039—915]
 - Q. But the answer is not affected?
 - A. The answer is not affected.
 - Q. Now, take question 19.
- A. The seventh line should read: "trial trip conditions would be 15.28 knots at 77 revolutions," instead of "trial trip conditions would be 15.76 knots at 77 revolutions."
 - Q. Is the answer to question 19 affected?
 - A. The answer to question 19 is not affected.
 - Q. Now, take question 21.
- A. In question 21 the second line should read: "The 'Beaver' made 17.06 knots per hour, would it be possible that," instead of "The 'Beaver' made 17.6 knots per hour, would it be possible that."

- Q. Is the answer unaffected?
- A. The answer to question 21 is unaffected.
- Q. Now, have you stated all of the hypothetical questions that have been affected by the change in the data suggested to you?
 - A. So far as I know we have, yes.

Cross-examination.

Mr. DENMAN.—Q. Turn to Question 15, Mr. Dickie; as I understand it, you and your father and Mr. Heynemann worked on that question together and you came to the conclusion that when the helm is hard-a-port, under the conditions described in question 15, the steamer would swing to port?

Mr. McCLANAHAN.—I object to that as improper cross-examination, having no reference whatever to the testimony given by the witness; it has no reference whatever to the changed data and is simply reopening the case for the claimant. I submit that there should be an end to this examination, Mr. Denman.

Mr. DENMAN.—Q. How does this change in data affect the [1040—916] answer to question 15?

Mr. McCLANAHAN.—Do you withdraw the other question?

Mr. DENMAN.-No, I do not withdraw it.

Mr. McCLANAHAN.—Then I submit that this question is improper because the witness has not stated that it affects the answer to 15.

Mr. DENMAN.—Q. How, if at all, does it affect the answer to question 15?

Mr. McCLANAHAN.—The same objection.

(Testimony of David W. Dickie.)

A. I cannot see that the change in data affects the question in any way at all.

Mr. DENMAN.—Well, now, let me see: how would she swing, under your theory of the case, and after the result of your consultation with your two confreres, how did you conclude she would swing with her helm hard-a-port under the conditions described in question 15?

Mr. McCLANAHAN.—I object to the question as improper cross-examination of the witness, having no reference whatever to the change of the data, for which he solely was called. You may answer the question, Mr. Dickie, I have now stated my objection.

Mr. DENMAN.—Q. Cannot you answer right off-hand which way she would swing?

A. Read the question again, please.

(Question read by the Reporter.)

Mr. McCLANAHAN.—I desire to have my objection noted again. I want to follow this right up.

A. The vessel would be swinging to port under those conditions.

Mr. DENMAN.—Q. That is your scientific opinion on the [1041—917] subject, is it?

A. Yes, sir.

Q. You never tried the experiment yourself, did you?

Mr. McCLANAHAN.—The same objection to that question.

A. Not on a ship the size of the "Beaver"; no, sir.

Mr. DENMAN.—Q. Did you ever make it on any size of a vessel over 50 feet in length?

(Testimony of David W. Dickie.)

Mr. McCLANAHAN.—The same objection.

A. Yes, 64 feet long.

Mr. DENMAN.—Q. But nothing beyond 64 feet? Mr. McCLANAHAN.—The same objection to that question.

A. No, sir.

Mr. DENMAN.—Q. The two vessels were not comparable in power, were they?

Mr. McCLANAHAN.—We make the same objection to that.

A. The vessel that I had had more power in proportion to her size than the "Beaver" had.

Mr. DENMAN.—Q. So there was a difference in proportion?

Mr. McCLANAHAN.—We make the same objection.

A. A slight difference.

Mr. DENMAN.—Q. There was a slight difference?

Mr. McCLANAHAN.—The same objection to that.

A. Yes, sir.

Mr. DENMAN.—That is all.

(An adjournment was here taken until Monday, July 31, 1911, at 11 A. M.) [1042—918]

Monday, July 31, 1911.

[Testimony of A. C. Johnson, for Libelants (in Rebuttal).]

A. C. JOHNSON, called for the libelants in rebuttal, sworn.

Mr. McCLANAHAN.—Q. What is your name, Captain?

- A. My name is A. C. Johnson.
- Q. What is your business?
- A. Captain; sea faring man.
- Q. You are a master? A. Yes, sir.
- Q. Where do you live?
- A. 1118 Montgomery Street, San Francisco.
- Q. How long have you lived here?
- A. You mean in San Francisco?
- Q. Yes. A. 36 years.
- Q. What is your age? A. 52.
- Q. How long have you been following the sea?
- A. Since I was 14 years old.
- Q. What papers do you hold?
- A. I hold master and pilot.
- Q. For this coast?
- A. For the bay and rivers and also for the gulf of the Farallones.
 - Q.What boat are you now in command of?
 - A. I am in the tug "Liberty."
- Q. You have been master of fishing boats, have you not? A. Yes, sir.
 - Q. What was your last command of a fishing boat?
 - A. The tug "Liberty" was fishing the last time.
 - Q. And what before the tug "Liberty"?
 - A. The "Blanco."
 - Q. How long have you been fishing?
 - A. Well, altogether, somewheres around 14 years.
 - Q. And where do you fish, generally?
- A. Well, at different times we fish north and at other times south. [1043—919]
 - Q. South of what?

San Francisco & Portland Steamship Co. 1225

(Testimony of A. C. Johnson.)

A. South of San Francisco, down toward Pt. San Pedro and Halfmoon Bay.

Q. And north of what?

A. North of Duxbury Reef, up off Pt. Reyes, halfway between the Farallones and Pt. Reyes.

Q. And you have fished, you think, for about 14 years? A. Yes, fully that, altogether.

Q. How often do you fish?

A. Well, while we are out fishing we go out every day, six trips a week, except in the winter time when it happens to be too rough, but that don't happen but very seldom.

Q. Do you mean that for 14 years you have made six trips a week fishing? A. Yes.

Q. Have you ever had occasion to pass through the

North Channel?

A Protty much twice a day when we are fishing

A. Pretty much twice a day, when we are fishing north.

Q. How many times?

A. Well, that I could not state. The biggest part of the time we fish north. In the winter time we fish north all the time mostly and we pass through the North Channel out and in pretty much every day.

Q. Then you have passed through the North Channel hundreds of times, have you? A. Yes, sir.

Q. When you are fishing north what is your last point of departure before you strike for the fishing banks?

A. Our last point is Duxbury Reef.

Q. Do you know where Red Buoy No. 2 is?

A. Yes, sir.

- Q. On what side of the North Channel going out is Red Buoy No. 2?
 - A. Red Buoy is on our port side going out.
- Q. You are familiar, are you, with the sea conditions along that north course, between the Channel and Pt. Reyes? A. Yes, sir. [1044—920]
- Q. After leaving Duxbury Reef as your point of departure what course do you generally take?
- A. Well, that is all different; it depends on where we go. We don't go in the same place every day you know; we generally have a boss fisherman, and he tells you when you leave San Francisco where you are going, where he wants to go.
- Q. Do you remember the 22d day of November, 1910, Captain? A. Yes, sir.
 - Q. What makes you remember that?
- A. Well, with reference to this collision here I suppose. I remember it well. I had a little bit of experience of it.
- Q. That is, you remember the day because of the collision? A. Yes, sir.
- Q. The collision between the "Beaver" and the "Selja"? A. Yes, sir.
- Q. What time did you leave San Francisco on that day to go fishing?
- A. I left about 20 minutes to 4 o'clock in the morning.
 - Q. What time did you return to port?
 - A. Somewhere around 5 o'clock.
 - Q. In the afternoon?
 - A. Yes, in the afternoon.

- Q. So you were at sea all of that day?
- A. Yes, sir.
- Q. Do you remember the condition of the weather?
- A. Yes, it was foggy going out in the morning, it was foggy all day, and also coming in in the afternoon.
 - Q. Do you remember the condition of the sea?
- A. Well, it was pretty smooth; nice smooth weather; no wind.
 - Q. Did that condition of sea last all day?
- A. All day. From when we went out in the morning until we came back the condition was just about the same thing. We went out the North Channel [1045—921] in the fog and came back in the same condition; no swell on.
- Q. Did you pass the Duxbury Buoy in going out that morning? A. Yes, sir.
 - Q. Did you see it? A. Yes, sir.
 - Q. How close did you pass to it?
 - A. Within 100 feet probably.
 - Q. Was it whistling?
- A. Just a faint whistle, just barely so you could hear it when you were alongside of it.
- Q. When you left Duxbury whistle which way did you steer your course going out?
- A. I steered west by south half south going out from Duxbury Reef.
- Q. What time did you leave the fishing banks, if you remember, that afternoon?
- A. Well, that I don't remember exactly, somewheres after 12 o'clock.

- Q. What did you direct your course to after leaving the banks?
- A. When I left fishing I steered east by north half north until I picked up the Duxbury whistle again.
- Q. How close did you come to Duxbury whistle on your return? A. About 100 feet again.
- Q. What was the condition of the whistle then as to sounding?
 - A. About the same thing, a faint sound.
- Q. Captain, do you know how long it takes your vessel generally to run from Buoy No. 2 to the Duxbury whistle?
- A. Yes, it takes me—well, there is a difference in the condition of the tides; it took me from Red Buoy to Duxbury Reef an hour and 20 minutes, an hour and 25, and sometimes an hour and a half. There is a difference in the condition of the tides.
 - Q. From the North Heads, or from No. 2 Buoy?
 - A. From No. 2 Buoy. [1046—922]
 - Q. How large a boat was the "Blanco"?
 - A. She is, I believe, 22 tons registered.
 - Q. How long is she?
- A. 62 feet, I think—I am not sure—but close on to that, something over 60.
- Q. Did the swell on the morning of November 22, 1910, interfere with the speed of your boat?
 - A. No, sir.
- Q. Did you make the run from Red Buoy No. 2 to Duxbury Reef in the usual time, considering the swell? A. Yes, sir.
 - Q. Captain, when did you pass the buoy on your

San Francisco & Portland Steamship Co. 1229 (Testimony of A. C. Johnson.)

return that day?

A. Well, that I could not say, what time it was, because we don't regularly keep no regular log; we simply have a little book for our own benefit.

Q. On that day on your return from the fishing banks in the afternoon, did you see the steamship "Beaver"? A. Yes, sir.

Q. You know the boat, do you? A. Yes, sir.

Q. Had you reached Duxbury Buoy before you saw the "Beaver"? A. No, sir.

Q. How long a time was it before that that you had seen the "Beaver"?

A. About 10 minutes, somewheres around 10 minutes.

Q. Did you see the "Beaver" before you heard her whistle? A. No, sir.

Q. You heard the whistle first?

A. I heard the whistle first.

Q. What course were you on when you heard the first whistle of the "Beaver"?

A. East by north half east north.

Q. And where did you hear that whistle?

A. Pretty near straight ahead.

Q. What speed were you making when you heard the whistle? A. Between 6 and 7. [1047—923]

Q. That is your full speed, is it? A. Yes, sir.

Q. Did you stop your engines or reduce your speed when you heard that whistle? A. No, sir.

Q. What did you do?

A. I starboarded my wheel and tried to get out of her course a little bit.

- Q. How soon after that did you see the "Beaver"?
- A. Well, it was pretty close on when I seen her, just after I heard her whistle; she loomed right up almost right ahead.
 - Q. Did you hear her whistle again?
 - A. Not until after she had passed me.
 - Q. But you heard it again?
 - A. I heard it again after she passed me.
- Q. And when you heard the second whistle was she still in sight? A. No, sir.
 - Q. She had passed into the fog?
 - A. She had passed into the fog again.
 - Q. How close to you did she pass?
- A. Well, she was about 150 feet, I guess, something like that; pretty close to us.
 - Q. Was she going slow or fast?
- A. She was going a pretty good speed. Of course, I could not tell how fast, but she was going pretty speedy.
- Q. Did the wake of the "Beaver" have any effect on your boat? A. Yes, sir.
 - Q. What was the effect?
- A. It threw the water in on my deck. We were not very far away from her.
- Q. The wake from the "Beaver" threw the water in on your deck?
- A. Yes, the wake from that ship threw the water in on my deck.
- Q. Could you have communicated with anyone on the "Beaver"? [1048—924]
 - A. I think I could, yes, sir.

San Francisco & Portland Steamship Co. 1231 (Testimony of A. C. Johnson.)

- Q. That is, you were close enough to it to have done that?
 - A. Yes, we were close enough to it.
- Q. When you had crossed the course of the "Beaver" did you use your whistle? A. Yes, sir.
 - Q. In what way?
- A. I was blowing my regular fog-signal and the minute I seen her I gave him two whistles.
- Q. At what point were you then, had you crossed the course?
- A. I had crossed his bow all right and was going in the opposite direction. I hauled in on my course again and I gave him two whistles.
 - Q. Did he answer your whistles? A. No, sir.
- Q. The only whistles you heard from the "Beaver" were two whistles?
- A. Yes, two whistles, one before I had seen him and another after he had passed me.
- Q. When the "Beaver" passed you, Captain, and while she was in sight what was her direction from your ship—the "Blanco"?
 - A. We were probably parallel.
 - Q. You were probably parallel? A. Yes, sir.
 - Q. Was she on your starboard side?
 - A. She was on my starboard side, yes, sir.
- Q. Did the swell interfere with the speed of your boat either going out or coming in on that day?
 - A. No, sir.
- Q. How far was the "Beaver" from you when you did see her that day?

- A. Well, I should judge probably not more than 500 feet off.
 - Q. That is when the loom first came up?
- A. When the loom first came up; when I was in the loom of her first. [1049—925]
- Q. Did you notice the Potato Patch when you passed out that morning? A. Yes, sir.
 - Q. Was the sea breaking on it? A. No, sir.
- Q. Was it breaking when you passed in in the afternoon? A. No, sir.
 - Q. Did your boat pitch any in that swell, Captain?
 - A. In the swell I was running through that day?
 - Q. Yes, on that day. A. No, sir.
- Q. Did you notice whether the "Beaver" was pitching any? A. No, sir.
 - Q. She was not?
 - A. Not that I noticed.
- Q. If you had been in the path of the "Beaver" at the time she loomed in sight, could she have avoided you?

 A. If I had been in her way?
 - Q. Yes, in her way.
- A. Well, I would not care to have stayed there; I was a little bit too close as it was to be comfortable at that time.
- Q. Before you had blown your two whistles, as your steering signal, had you blown any other whistle? A. Yes, sir.
 - Q. What whistle?
 - A. Blowing the fog whistle all the time steady.
 - Q. All the time?
 - A. Yes, and pretty lively too.

Cross-examination.

Mr. DENMAN.—Q. Captain, what nationality are you? A. Dane.

- Q. You say on this day you had gone out fishing and there was a short low easy swell?
 - A. Yes, sir.
- Q. And that you only heard two whistles from the "Beaver" before you saw her? A. Only one. [1050—926]
- Q. One whistle before and one whistle after you passed? A. Yes, sir.
 - Q. You are sure of that, are you? A. Yes, sir.
 - Q. You swear to that, do you? A. Yes, sir.
 - Q. Your ears are good ears?
 - A. Reasonable good.
- Q. Suppose you should learn that the "Beaver's" whistle was blowing automatically every minute, how would you account for not hearing it?
 - A. I don't know.
- Q. Whistles are sometimes very deceptive in the fog, are they not?
- A. I think when you are out clear of the land you ought to hear it.
- Q. And you are willing to swear you only heard two whistles, one before and one after?
 - A. I only heard two whistles.
 - Q. Do you know what an automatic whistle is?
 - A. Well, I have never seen one.
 - Q. Yon know what they are, don't you?
 - A. Yes.
 - Q. What is an automatic whistle?

A. Well, it goes by machinery, the same as a clock, doesn't it?

Q. Yes.

- A. Of course, when you are out to sea that way and in a position of that kind a minute probably seems a long time, but that is all the whistles I heard from him.
- Q. How was the whistle you heard—was it loud or soft?
- A. Well, pretty loud. She has a pretty loud whistle.
 - Q. She has a pretty loud whistle, has she not?
 - A. Yes, sir.
- Q. How far do you think you could hear that whistle?
- A. Well, that I could not say. Those small boats of ours burn oil and they make a good deal of noise when they are running but you can hear the whistles a pretty good distance. [1051—927]
- Q. Do you mean to say that your boats are so unsafe from the oil-burning that you cannot hear more than one whistle of the "Beaver" before she is on you?
- Mr. McCLANAHAN.—I object to the question because the witness has not stated the boat was unsafe because of oil burning.
- A. Well, I can easily answer that; it is not mine alone, but every oil-burner is in the same condition when they are burning oil and the oil-burners are running, they are making such a roar that it is not as easy to hear as when you burn coal.

Mr. DENMAN.—Q. Don't you know that you heard the whistles of steamers 5 and 6 and 7 whistles before you come on to the steamer? A. Yes.

Q. Even when these boats are making all the noise that you can make? A. Yes.

Q. So there must have been something unusual that day if the "Beaver's" whistle was blowing and you did not hear it.

- A. Well, I didn't hear it.
- Q. What sort of a whistle have you got?
- A. A regular ordinary steam-whistle.
- Q. Do you know what the make of it is?
- A. No, sir, I do not.
- Q. Do you know the size of it?
- A. No, I do not know that either, but it is a pretty fair whistle.
 - Q. It is not as loud as the "Beaver's," is it?
 - A. Oh, no.
- Q. How long did it take you to run from Red Buoy to Duxbury Reef on that day—did you time it?
- A. I did, but I have not got it down with me. If I am not mistaken it was an hour and 20 minutes. [1052—928]
 - Q. An hour and 20 minutes? A. Yes.
- Q. You have talked this over with Mr. McClanahan, have you not? A. I have, yes, sir.
 - Q. When did you first talk it over with him?
 - A. Well, I don't remember what day it was.
 - Q. A month ago?
 - A. No, I don't think it is as long as that.

(Testimony of A. C. Johnson.)

- Q. You don't think it is as long as that?
- A. No.
- Q. Two weeks ago?
- A. Yes, I think something like that.
- Q. How did you come to go to Mr. McClanahan?
- A. Well, the captain brought me up.
- Q. Had you talked to the captain before that?
- A. I had.
- Q. How long before that had you talked to the captain?
 - A. Well, probably right after the collision.
 - Q. Right after the collision? A. Yes, sir.
- Q. But you had not seen Mr. McClanahan until just before you came up here? A. Yes, sir.
- Q. And you talked the matter over with the captain before, did you? A. Yes, sir.
 - Q. Did you give him a statement in writing?
 - A. No, sir.
 - Q. Nothing in writing? A. No, sir.
- Q. What vessels did you see as you came in that night?
- A. The only vessel I seen was the "Beaver." I heard one more steamer but I did not see her.
- Q. Did you see any vessel lying at anchor outside the heads? A. No, sir.
 - Q. You are sure of that, are you? A. Yes, sir.
- Q. Now, you want to swear absolutely and positively that at the 4-fathom bank the Potato Patch was not breaking when you went in? A. Yes, sir. [1053—929]
 - Q. You swear to that, do you? A. Yes, sir.

San Francisco & Portland Steamship Co. 1237 (Testimony of A. C. Johnson.)

- Q. You are sure of that, are you? A. Yes, sir.
- Q. And the swell was just a low swell?
- A. An ordinary long swell, the same as usual in the winter time.
 - Q. You said it was a low swell?
 - A. Yes, it was a low swell.
 - Q. You swear to that, do you? A. Yes, sir.

Mr. McCLANAHAN.—He is swearing to everything, Mr. Denman.

Mr. DENMAN.—I know that, but I want to make it certain in his mind, that is all, thank you.

Redirect Examination.

Mr. McCLANAHAN.—Q. I never saw you but once before this morning, did I?

- A. That is all.
- Q. And don't you remember it was a week ago last Saturday that you came into my office?
- A. No, I do not, Mr. McClanahan, because I don't put those things down. I never thought I would be mixed up in this case, so therefore I have not paid any particular attention to it.

[Testimony of Edward Johnson, for Libelant (in Rebuttal).]

EDWARD JOHNSON, called for the libelants in rebuttal, sworn.

Mr. McCLANAHAN.—Q. What is your name?

- A. Edward Johnson.
- Q. How old are you? A. 27.
- Q. Where do you live?
- A. 1346 Twelfth Avenue, Sunset.

- Q. How long have you lived in San Francisco?
- A. All my life.
- Q. What is your business?
- A. I am captain of a fishing steamer.
- Q. What papers do you hold?
- A. I hold master and pilot for the bay and tributaries, to Collinsville and Antioch, and the Gulf of the Farallones; and mate of towing steamers, coastwise. [1054—930]
 - Q. How long have you held those papers?
 - A. It will be five years on the 24th of October.
 - Q. What is your present command?
 - A. The steamer "Pedro Costa."
- Q. How long have you been in command of the "Pedro Costa"?
- A. We work the two boats alternately; we have two boats, the "Christopher Columbus" and the "Pedro Costa." During the winter we have the "Pedro Costa" and in the summer we have the "Christopher Columbus." We have had the "Pedro Costa" now since last October.
- Q. Are you familiar with the coast lying north and west from this port? A. Yes.
 - Q. Up as far as Pt. Reyes? A. Pt. Reyes.
 - Q. And along Duxbury Reef? A. Yes, sir.
- Q. In making your trip to the northward, do you pass through the North Channel?
 - A. Mostly always; yes, sir.
- Q. How often have you gone out in that direction fishing?
 - A. Oh, well, we go out, when we are fishing north,

sometimes three months at a time—every morning except Saturdays.

- Q. That is, three months continuously at a time?
- A. Yes, sir, continuously.
- Q. How long have you been doing that?
- A. It was two years the first of last May.
- Q. Before that I understand you were on a tugboat?
- A. Yes, the Spreckels tow-boats, most of the time.
- Q. Did you have any experience on them that would enable you to judge of the conditions of that coast?
- A. Yes, sir, I was master of the tug "Reliance" and the "Alert" and mate of the tug "Relief" and "Fearless." [1055—931]
- Q. Do you know the sea conditions along that coast between the North Channel and Pt. Reves?
 - A. Yes, sir.
- Q. You have learned that through experience, have you? A. Through experience, yes, sir.
 - Q. Do you know where the Potato Patch is?
 - A. I do.
- Q. That is sometimes called the 4-fathom bank, is it not? A. The 4-fathom bank, yes, sir.
- Q. How long does it take the "Pedro Costa" to make the trip under normal conditions from Red Buoy No. 2 to Duxbury Buoy? A. 55 minutes.
 - Q. That is your usual time, is it?
- A. The usual time. Of course, if it is blowing a northwester it takes us longer.

- Q. Captain, can you tell, while you are at sea fishing, from the condition of the sea, whether it is breaking over the Potato Patch, or not?
 - A. We can, yes, sir.
- Q. So that even in a fog if it is breaking over the Potato Patch and you are out at sea, you can tell?
 - A. We can, yes, sir.
 - Q. How do you do that?
 - A. Well, we can tell by the sea that is running.
 - Q. From your experience at sea?
- A. From our experience out there we can generally tell, we most always can tell. We never got caught at it yet.
- Q. When does the sea break on the Potato Patch as regards the tides? A. On an ebb tide.
- Q. When you are fishing out there north, what is the last point of departure?
 - A. As a rule Duxbury Reef Buoy.
- Q. How far can that whistle be heard under the most favorable conditions?
- A. Oh, I should judge a couple of miles. [1056—932]
- Q. How close do you pass to that whistle in clear weather? A. Mostly always alongside of it.
 - Q. And when it is foggy?
- A. Well, we generally make it pretty close. If it is blowing a little northwester and a choppy sea, we mostly always hear it. We always pick up Duxbury going out, because that is generally our point of departure when we go to the grounds.
 - Q. What is the general condition of the sea out

there with respect to swells?

- A. There is always a westerly swell, always a westerly ground swell.
- Q. Do you remember the 22d day of November, 1910? A. I do.
 - Q. What makes you remember that day?
- A. On account of this trouble with the "Selja," the sinking of the "Selja," and then on account of the fog. It was a very thick fog.
- Q. You remember the collision, do you, between the "Beaver" and the "Selja"?
 - A. I do, yes, sir.
- Q. And you remember that to be the 22d of November, 1910? A. I do.
- Q. What time did you leave the port of San Francisco on the 22d of November, 1910?
 - A. 4 o'clock in the morning.
- Q. How long did it take you to reach Duxbury from Red Buoy No. 2?
 - A. It would take us about 2 hours and 10 minutes.
 - Q. From Red Buoy No. 2 to Duxbury?
 - A. 55 minutes from Red Buoy No. 2 to Duxbury.
- Q. Do you remember the time it took you on the 22d?

 A. The same time.
 - Q. Do you remember that? A. I remember it.
 - Q. Why do you remember it?
- A. I always figure on 55 minutes and always find it that way except on an exceptional northwest [1057—933] wind or an exceptional flood tide.
- Q. Do you remember on this day that you made it in 55 minutes?

- A. I would not say it positively but it was pretty close to it.
- Q. Was there anything unusual in the sea that morning? A. It was very calm.
 - Q. It was very calm?
 - A. Very calm—a thick fog.
- Q. Was the sea breaking on the Potato Patch that morning when you went out? A. No, sir.
- Q. How close did you come to Duxbury whistle that morning?
- A. Well, I was about 200 feet from it, I guess, going out.
 - Q. Did you see it?
- A. I didn't see it. The fireman saw it. We were looking for it. I had run my 55 minutes, but the fireman saw it before I did and called my attention to it and then I shaped my course.
 - Q. What was your course then from there?
 - A. West by south.
- Q. Did you hear the Duxbury whistle in the morning when you went out? A. No, sir.
- Q. What was the condition of the sea at the fishing banks as compared with the sea around Duxbury Reef? A. It was the same all day.
 - Q. The same all day?
 - A. It was the same all day.
 - Q. What kind of a sea would you call that?
 - A. There was a very light westerly ground swell.
 - Q. What was the condition of the fog?
- A. Very thick. Occasionally it would lift a little bit, once in awhile, but it would not lift for only the

fractional part of a minute, it would just lift and then drop again very thick.

- Q. Did that condition remain all day?
- A. Yes, sir. [1058—934]
- Q. What time did you return to this port that day? A. What time did I get to the dock?
 - Q. Yes.
- A. I think it was around 5 o'clock, or a little after, if I remember right; I could not say positively.
- Q. Do you know which of the fishing boats had preceded you from the fishing ground?
- A. Yes, the "Annie" and the "Farragut" and the "Blanco."
- Q. Which point in—which boat in point of time were you nearest to? A. The "Blanco."
 - Q. Were you ahead of the "Blanco" or behind it?
 - A. I was astern of it.
- Q. On the course back to port, did you see the "Blanco" at all? A. No, sir.
 - Q. What prevented that? A. The thick fog.
- Q. On the course back how near did you pass to the Duxbury whistle? A. Run up alongside of it.
 - Q. Could you hear the whistle?
- A. Yes, just faintly. It cleared up a little bit. We were looking for it. It cleared up for a few seconds.
- Q. Captain, did that swell on that day in your trip out to the fishing grounds interfere with the speed of your ship?
 - A. No, we run the same time.
 - Q. Coming back did it interfere with the speed of

(Testimony of Edward Johnson.)
your ship?
A. No, sir.

- Q. Did your vessel pitch on either occasion?
- A. No, there was no pitch to her at all, except in running over the ground swell. There was no pitch to her.
 - Q. Was there any wind that day?
- A. There was a light westerly air in the afternoon.
- Q. And I understand you to say the conditions of the sea and [1059—935] fog remained the same all day?
 - A. Practically the same, yes, sir.
- Q. Before reaching Duxbury whistle that day had you heard any fog-whistles?
 - A. Going out in the morning?
 - Q. No, coming in?
- A. Just one. Some steamer, which we found out afterwards was the "Beaver"—
 - Q. Where did you hear this first whistle?
 - A. On my starboard bow.
- Q. What whistles had you been blowing up to that time?
- A. I was blowing my whistle all the time, the regular fog signal.
- Q. What did you do when you first heard this whistle on your starboard bow? A. I stopped.
 - Q. You stopped your engines?
 - A. I stopped my engines.
 - Q. Did you hear that whistle again?
 - A. I heard it again when she was on my port bow.
 - Q. Was she in sight when you heard it first?

A. No, sir.

- Q. Was she in sight when you heard the second one? A. No, sir.
- Q. Between the first and the second whistle had you seen the "Beaver"?
- A. Well, I can see a steamer in the fog. I could just see a black outline of a steamer in the fog; I could not say just what it was. It was just a fractional part of a minute. I heard her blowing on the port bow; in fact, I started to go ahead when I heard her blow but I knew that she had passed.
- Q. You said this was the "Beaver"; how do you know it was the "Beaver"?
- A. Because when I came into the dock the captain of the "Blanco" asked me if I saw the "Beaver" and I said, no, I didn't see her but I saw a vessel that came pretty [1060—936] close to me. He said that was the "Beaver" and he said it came close to him because it washed his decks. So I thought it was the "Beaver" too.
 - Q. Are you familiar with the "Beaver's" whistle?
 - A. Yes, sir.
 - Q. Are you familiar with the "Bear's" whistle?
 - A. Yes, sir.
 - Q. Are those two whistles nearly alike?
 - A. Yes, sir.
- Q. Is it possible for you to tell from the hearing of the whistle whether the steamer is either the "Beaver" or the "Bear" or some other vessel?
- A. Well, I know it was either the "Bear" or the "Beaver" because by the time—we generally look

at the sailings from the city, the time they leave, and I can generally tell what steamer it is. Those two steamers I can tell by their whistles; of course I could not tell whether it was the "Bear" or the "Beaver," but it was one of the two.

- Q. After you stopped your engines, what did you do with your own whistle?
 - A. I kept it a blowing.
- Q. After leaving Duxbury whistle on your return on that day, did you pass through the North Channel?

 A. I went over the bank.
 - Q. You went over what bank?
 - A. Over the 4-fathom bank.
 - Q. Over the Potato Patch? A. Yes, sir.
- Q. Was there any swell breaking when you passed over it? A. No.
 - Q. What time did you pass over the bank?
- A. It was around 4 o'clock. I would not say positively but I guess it was around 4 o'clock.
- Q. On what side of you was Red Buoy No. 2 when you passed over the bank? [1061—937]
 - A. I did not se the Red Ruby.
- Q. Well, whether you saw it, or not, if you passed over the bank can you tell what side it was on?
 - A. Oh, it was on my port side.
- Q. Was the fog still thick when you passed over the Potato Patch? A. Yes, sir.
 - Q. And you are sure the sea was not breaking?
 - A. I am sure of that.
- Q. Would you have passed over the bank if it had been breaking?

 A. No, sir.

Q. Had you determined to pass over the bank before you reached it?

A. Well, I was going to try to pick up No. 2 Buoy if I could, but I was not bothering about it. I knew the bank would not be breaking, or that the bar would not be breaking. I picked up Bonita.

Q. How far from you was the "Beaver" as she passed—what is your best judgment?

A. Well, I should judge a couple of hundred feet.

Q. You saw just but a momentary flash?

A. I just barely seen her. She went by so quick I could not distinguish what it was. I knew it was a big ship of some sort; in fact, I knew it was either the "Bear" or the "Beaver."

Q. You knew that from the whistle?

A. I knew that from the whistle.

Cross-examination.

Mr. DENMAN.—Q. As I understand it, the sea on that day was a short low swell that gave you no trouble at all? A. Yes, sir.

Q. And you only heard one whistle of the "Beaver" before you saw her? [1062—938]

A. One whistle, yes.

Q. By the way, do your engines interfere with your hearing whistles on your boats?

A. Well, the oil-burners do sometimes but we shut the burners off that day. If we are waiting, trying to find a whistle, we shut off the burners.

Q. So you think you might have heard the whistle of the "Beaver" before, if you had not had your oilburners burning—is that it?

- A. Well, I might have.
- Q. It is not rather extraordinary that your—by the way, the "Beaver" has one of the loudest whistles on the coast, the "Beaver" and the "Bear"?
 - A. She has a very distinct whistle.
- Q. And I understand that your engines make so much noise that you only heard one whistle?
- A. That is all I heard. I heard one whistle on my starboard bow and one whistle on the port bow.
- Q. You know she has an automatic whistle. don't you? A. I found that out afterwards.
- Q. And that means that she blows every 55 seconds, does it not?
 - A. I found that out afterwards, yes, sir.
- Q. And your testimony is you heard but one whistle of the "Beaver" coming on?
 - A. Yes, sir.
 - Q. And one whistle after she passed?
 - A. Yes, sir.
 - Q. And then she went out of hearing?
 - A. Then she went out of hearing.
- Q. What would account for you not hearing more whistles of the loudest on the coast?
- A. Well, as I say, it might possibly have been the burners. If we hear a whistle we shut the burners off quick, we stop them.
- Q. Well, will you tell me how you are going to be able to go through your maneuvers safely if you can only hear one whistle [1063—939] of the loudest whistle on the coast?

San Francisco & Portland Steamship Co. 1249 (Testimony of Edward Johnson.)

A. Well, I live up to the rules of the road; if I don't know the position of the other vessel I stop and determine where she is.

Q. But how can you safely go through the fog if you can only hear one whistle of the loudest whistle on the coast? Do you mean to say that your engines are in such condition, that they make so much noise, that an approaching vessel will give you warning of but one whistle before she is on you?

A. Well, the conditions are that way. The whistles are very deceiving.

Q. They are deceiving? How is that? Is it on account of the fog?

A. The weather conditions. Sometimes you can be right up on Pt. Bonita and you can't hear it, and then again you can hear it a mile out at sea.

Q. Would you say that fog conditions would affect it so much that you could have heard three or four whistles if there was no fog and only one whistle if there was a fog? A. I heard two whistles.

Q. Would you say the fog had anything to do with it? A. I don't know.

Q. Have you ever had any experience that the fog affected your hearing of whistles?

A. That I could not say.

Q. Well, you ought to know whether the fog might affect your hearing of whistles blown during a fog.

A. Well, I know this about Bonita, you can run right close up by the beach there and then you can't hear it and then again you can be out by the Lightship and you can hear it.

- Q. How far is the Light-ship from Bonita?
- A. About 6 or 7 or maybe about $7\frac{1}{2}$ miles. [1064—940]
 - Q. And can you hear Pt. Bonita out that far?
 - A. At times I have heard it.
 - Q. But that is exceptional, is it not?
 - A. Yes, sir.
- Q. Don't you know that the "Kansas City," the "Harvard" and the "Yale" all have the same whistles as the "Beaver" and the "Bear"?
 - A. I didn't know it.
- Q. How did you know that the "Beaver" and the "Bear" were the only vessels having that whistle?
- A. I say I know the two of them because we passed them two or three times a week and we are blowing to them. We know nearly all of the regular passenger steamers that are running on the coast. We can tell very nearly all of them by the whistles—the big passenger ships.
- Q. Do you know that the "Kansas City" was running on that route at that time?
 - A. I didn't know it.
- Q. And it had been running there for a year at that time, as a passenger ship?
 - A. I didn't know it.
- Q. Are you sure you covered the 4-fathom bank on that day? A. Yes, sir.
 - Q. You are sure of it? A. Yes, sir.
- Q. You could not mix that day up with any other day? A. No, sir.
 - Q. And you are willing to swear to that?

San Francisco & Portland Steamship Co. 1251
(Testimony of Edward Johnson.)

A. I am willing to swear to that.

(A recess was here taken until 2 P. M.) [1065—941]

AFTERNOON SESSION.

[Testimony of Olaf Lie, for Libelants (Recalled in Rebuttal).]

OLAF LIE, recalled for libelants in rebuttal:

Mr. McCLANAHAN.—Q. Captain Lie, on the redirect examination of Captain Bulger by Mr. Denman there was read from the proceedings before the inspectors certain matter which appears at pages 707–708 of the present record and at the close of this extract which was read, or a closing part of it, there appeared the following:

"Inspector BOLLES.—Q. How long does it take the 'Selja' to stop when the engines are stopped from full speed?

A. I could not say anything about it at all."

From the context it would appear that that question was put to you and that the answer was yours.

Is that true?

A. No, sir.

- Q. Whose answer is that?
- A. The third officer's answer.
- Q. And the question was put to the third officer?
- A. Yes, sir.
- Q. And the transcript of the proceedings before the inspector shows that, does it not?
 - A. Yes, sir.

Mr. DENMAN.—Does not the record show I was reading a question?

Mr. McCLANAHAN.—No, it looks as though it might have been Captain Lie's.

Mr. DENMAN.—No, I did not contend that.

Mr. McCLANAHAN.—You omitted this:

"Inspector BULGER.—(To the witness.)" Bjorn was the witness. You did not put that in.

Mr. DENMAN.—Oh, yes, I see.

Mr. McCLANAHAN.—Q. When Captain Bulger was under examination here, it appears that he was asked this question with [1066—942] reference to the conversation he had with you at his office in San Francisco, to which he testified:

"Q. How did you know he was Captain Lie?
A. I asked him. I think he had a pair of
white shoes on when he came in there, if I recollect it."

Did you have a pair of white shoes on?

A. No, sir.

Q. You had a pair of white shoes on on the "Beaver," after the collision, did you not?

A. Yes, sir.

Q. Where did you get them?

A. I got them from one of the passengers. I think he was a waiter. He said to me that he was on a vacation and that he was going up north. He is the man who gave me the white shoes.

- Q. And when did you discard those white shoes?
- A. The night I came ashore.
- Q. That is, the night of the 22d? A. Yes, sir.
- Q. And you never have had them on since?
- A. No, sir.

San Francisco & Portland Steamship Co. 1253
(Testimony of Olaf Lie.)

Q. So you did not have the white shoes on at the time you had your talk with Captain Bulger?

A. No, sir.

- Q. I want to ask you whether this statement of Captain Bulger's is correct, found at page 681 of the evidence: "I spoke to the captain"—referring to you; "I cannot tell you the exact words, but when we got to a point where the captain told me that he had been stopped for 10 minutes, I asked the captain if he was blowing his whistle; he said yes, he was blowing a fog-whistle. At that point I said to the captain, 'We don't wish to take any advantage of you, Captain; I think it would be advisable for you to have your attorney here to represent you.'" What have you got to say to that statement?
- A. I did not give any such statement. It is not correct. [1067—943]
- Q. Do you remember the conversation that you did have with Captain Bulger on that day?
- A. Well, I remember a little of it. I did not have any conversation hardly with him except when he met me in the hallway, he asked me if I wanted to raise any charges against Captain Kidston and I said I didn't know. And Captain Kidston was there at the same time, and he interrupted and said, "Don't speak that way, Mr. Bulger," he said. And I will telephone to my attorney about it—
- Q. (Intg.) "And I will telephone to my attorney about it"—those were your words? A. Yes, sir.
 - Q. Did you telephone to your attorney about it? A. Yes, sir.

- Q. Who was your attorney at that time?
- A. You, Mr. McClanahan.
- Q. You telephoned to me? A. Yes, sir.
- Q. And asked what?
- A. If I was there to raise any charges against Captain Kidston.
 - Q. And what did I say?
- A. You said, "No, you are there through courtesy"—you said that to me.
- Q. Did you tell Captain Bulger you had been stopped for 10 minutes? A. No, sir.
 - Q. Or that you had been blowing your fog-whistle?
 - A. I don't think I told him anything about it.
- Q. Have you told all that you remember of the conversation?
- A. Well, the hearing was set before the Norwegian Consul in the afternoon, and I was called up by Mr. Blair, I think his name is, of the Pacific Mail, to take my officers up to the inspectors, because the hearing was going on in the forenoon of that day, but Bulger said it would not be before the afternoon. So I took my witnesses away. That is all. I didn't say nothing. [1068—944]
 - Q. Have you ever seen Captain Bulger before?
 - A. No. sir.
- Q. Had you ever had any conversation with him before that? A. No, sir.
- Q. Did you have one after that and before the hearing? A. No, sir.
- Q. I hand you Respondent's Exhibit "B," which is Mr. Frey's memorandum of a conversation be-

tween yourself and Mr. Frey, held on November 23, 1910. Will you please read that over to yourself, Captain, and tell me if there is anything in that that you wish to contradict—yes, or no.

- A. Yes, I wish to contradict some of it.
- Q. Will you now read that portion of the statement that you wish to contradict—just that portion, and nothing more.
- A. "And that about 5 minutes after hearing the 'Beaver's' whistle the engines were stopped altogether and the ship went ahead under her own momentum."
- Q. Did you say that to Mr. Frey in that conversation? A. No, sir.
- Q. What else do you wish to contradict, if anything?
- A. Well, there is one thing before that I just omitted, and that is the 50 revolutions. I did not state any revolutions. It says here: "At the time was going ahead under about 50 revolutions."
- Q. And you did not make any statement as to revolutions? A. No, sir.
 - Q. Now, tell me if there is anything else.
- A. "And he states that there was a very heavy swell." I did not state that there was a very heavy swell. "And one of these swells picked up the 'Selja' immediately prior to the collision, and threw her broadside in the direction of the 'Beaver,' then [1069—945] passed on and picked up the 'Beaver' and both the 'Selja' and the 'Beaver' were forced into the trough of the sea toward each other."

- Q. Do you wish to contradict that statement?
- A. Yes. "It is Captain Lie's belief that the impact was materially accelerated because of this."
 - Q. Do you wish to contradict that? A. Yes, sir.
- Q. Is there anything else in the statement you wish to contradict?
 - A. No, I don't think there is anything else.
- Q. Captain, is there anything in that conversation with Mr. Frey with reference to the cause of the collision, how it happened?
- A. Well, this cause about the swell there was suggested by Mr. Frey. He was talking about if the swell took the 'Selja' up and threw her against the 'Beaver.' That was suggested, but I did not say anything positively about that at all. I did not say anything about it.
 - Q. The suggestion came from Mr. Frey?
 - A. Yes, sir.
- Q. And he evidently thought it was acquiesced in by you?
 - A. Yes, I expect so; it is put in here that way.
- Q. Do you wish to affirm all the balance of the statement?
- A. Well, I would not say to affirm it or to deny it. I might have said some of it. I would not positively say that I did say it or I did not say it.
- Q. But that which you have put into the record you deny having said? A. Positively.
- Q. The second officer of the "Beaver" testified that before the collision the "Selja's" bow was pointed about up into the westerly swell; what have

San Francisco & Portland Steamship Co. 1257 (Testimony of Olaf Lie.)

you got to say to that statement?

Mr. DENMAN.—I object to that upon the ground that it is [1070—946] distinctly leading and not a proper method of examination. If you will ask him what he saw at that time, and what happened at that time, and direct his attention to the time, there will be no objection.

Mr. McCLANAHAN.—You have your objection entered. I do not propose to change my question. You need suggest the form of the questions to me.

Mr. DENMAN.—But I want it to appear in the record right here that I have made the suggestion to you.

Mr. McCLANAHAN.—You may answer the question, Captain.

A. No, sir, she did not head into the swell.

Mr. McCLANAHAN.—Q. Before the collision? A. No. sir.

Q. The second officer also testified with reference to a conversation held between Captain Kidston and yourself on the bridge of the "Beaver" after the collision, and in his statement of that conversation he says as follows, with reference to your statement in regard to the "Selja." He says that you said to Captain Kidston the "Selja" was at a standstill rolling in the trough of the sea for over 10 minutes before the collision. Did you or did you not make any such statement to Captain Kidston?

A. I did not.

Q. Now, with reference to the same conversation, the third officer of the "Beaver," a Mr. Judson,

says that your words to Captain Kidston on that occasion on that subject were the following: "The 'Selja' was lying dead in the water, rolling in the trough of the sea for over 10 minutes." Did you or did you not make any such statement to Captain Kidston? A. I did not make it.

- Q. This officer also says that you told Captain Kidston that you had been taking soundings and got 32 fathoms. Did you or [1071—947] did you not make any such statement to Captain Kidston at that time?
- A. I might have said soundings; I might have said that I had taken soundings, but I never said that we got 32 fathoms.
- Q. Captain Kidston in his testimony, at pages 571 and 572 of the record, with reference to this same conversation has this to say:

"That is the remark he made to me, that he knew it was either the 'Beaver' or the 'Bear' by the sound of the whistle, and that he had been lying at a standstill for over 10 minutes in the trough of the sea and that he had taken a sounding."

What have you got to say to that statement?

- A. I might have said that I thought it was the "Beaver" or the "Bear," but I never said that she was at a standstill at any time; and I also may have said that we were taking soundings.
- Q. Captain Kidston's version is that you were lying at a standstill for over 10 minutes in the trough of the sea; did you or did you not say that?

A. No, sir, I did not say that.

Q. Captain Kidston also with reference to that same conversation said that you told him on the bridge that you had been up from 2 o'clock in the morning, that you had made the land and got your soundings at 2 o'clock in the morning; did you or did you not make any such statement to Captain Kidston?

A. No, sir, I never made that statement.

Q. What time did you get up that morning, Captain Lie?

A. One o'clock; a minute or so before one, I should say.

Q. What time did you take your first sounding?

A. 5:30 A. M.

Q. What time did you make the land that morning? [1072—948]

A. The first time I heard the whistle was 2:30

P. M., the whistle off Pt. Reyes.

Q. Did you at any time, either on the bridge or anywhere else, ever make the statement that your vessel had been at a standstill for 10 minutes before the collision?

A. No, sir, I never made that statement.

Q. Did you or did you not ever make a statement that you had been at a standstill at all before the collision? A. No, sir.

Q. Captain Lie, when your vessel has ceased her movement through the water, how do you designate that situation?

A. I say she is done, or she has no way upon her,

or she is stopped, her headway stopped.

- Q. Would you say she was at rest?
- A. Well, I might say she was at rest.
- Q. Prior to this collision had you ever used that word, "standstill," with reference to the vessel's being done or stopped in the water?

Mr. DENMAN.—Please do not lead the witness. It is obvious what his answer is going to be but we would rather have the record the other way.

Mr. McCLANAHAN.—Answer the question, Captain.

- A. No, sir, never.
- Q. When did you first hear of the use of this word "standstill" to represent that condition of the vessel?
- A. After I saw the translating of my log for the Norwegian Consul.
 - Q. Who translated that log?
- A. The Secretary of the Norwegian Consul, Mr. Bjolstad. [1073—949]
 - Q. Did you have anything to do with it?
 - A. No, sir, nothing; absolutely nothing.
- Q. When you first read that translation, did that appear to you as something unusual?
- A. I never heard tell of it, but I never thought of altering it at all. I did not say anything about it.
 - Q. Why not?
- A. Because it did not look serious to me, I did not think much of it.
- Q. Does it not mean the same thing as "stop" or "dead in the water"?

San Francisco & Portland Steamship Co. 1261 (Testimony of Olaf Lie.)

A. Well, practically the same thing, yes.

Q. Captain Kidston in his examination, at page 653 of the record, in speaking of how the collision occurred, says:

"We seemed to have raised on the swell and as we came down on the swell again that was the time of the collision, and in coming down she chopped right into the side of the ship."

Bearing that testimony in mind, Captain, I ask you where you were looking after first sighting the "Beaver."

- A. My eyes were entirely put upon the "Beaver" at that moment.
 - Q. Until what time?
 - A. Well, until the time of the impact.
 - Q. Until the time of the collision?
 - A. Yes, sir.
- Q. What have you to say to the statement I have just read to you as the statement made by Captain Kidston?
- A. My statement is that she hit and cut right into her. She did not pitch at all when she hit.
- Q. Captain Kidston has said in his statement in this case, at page 562 of the record, that at the time the "Beaver" struck the "Selja" she, the "Selja" was heading up toward the swell; what have you got to say to that statement? [1074—950]
 - A. No, sir, she was not heading up to the swell.
- Q. Immediately after the collision, Captain, what did you do?
 - A. Well, I ordered the engines—first, I ordered

the boats out; I ran off to the port side and told the Third Officer to come down and get the boat out, the port gig, and then I ordered everybody to their stations, and just as I did that I stopped the engines and told the engineer to come up. I did that through the speaking tube. After that was done and the port gig was over the side I ran down and got hold of all the ship's papers, got hold of everything and threw them into the starboard boat, which was then ready to be lowered, and then I ran over again to the other side to see if their boat was ready and then back again to the starboard side and commenced to lower that boat.

Q. When you say "their boat" what boat do you mean?

A. The ship's boat, the boat on the port side. And before I went down from the bridge I shouted over to Captain Kidston to give us a hand, because I saw she would sink rapidly; I said that he must help us or we would not be saved. Just then he rung his bell for his boats, to commence to get them out. Then I went to the starboard boat and commenced to lower it; we lowered it halfway down and as the ship listed so heavily over it we landed right on the side and the swell being right on the beam it washed the boat upwards and hit her against the plates of the ship and smashed her that way.

Q. If the "Selja" had been headed up toward or into the swell would the starboard lifeboat have been smashed?

A. I don't think so. I am nearly positive that would not be so.

San Francisco & Portland Steamship Co. 1263 (Testimony of Olaf Lie.)

Q. Where did you see the swell at the time she struck the starboard boat? [1075—951]

A. It was broadside on to the "Selja"; starboard side, broadside on.

Q. You spoke of hearing a bell on the "Beaver" after you shouted to Captain Kidston for assistance. What bell was that?

A. That is the ordinary ship's bell. You know they ring a bell to show—I expect that is the rule there, it is generally the rule on all ships, that everybody goes to their stations on the boat.

- Q. It is the bell directing the crew to their stations?
- A. Yes, that is what I understand.
- Q. Captain, I understand you had been on the "Selja" from the time of her construction until the collision? A. Yes, sir.
 - Q. Constantly? A. Yes, constant.
- Q. Was the "Selja" ever maneuvered so as to find out within what time she would stop after her engines were stopped?

 A. No, sir, never.
- Q. Do you think it would have been possible for the chief engineer to have maneuvered the "Selja" without your knowing it, in order to ascertain in how long a time the "Selja" would stop after her engines were stopped?

 A. Absolutely not.
- Q. How long does the fog whistle blow at Pt. Bonita?
 - A. Five seconds; that is all that my book showed.
 - Q. Your book shows that? A. Yes.
 - Q. What is the book you refer to?
 - A. The lighthouse book of the world, and also the

Pacific Coast book, issued by the United States Government, I think.

Mr. DENMAN.—Q. Have you got that here now, Captain? [1076—952]

Mr. McCLANAHAN.—We have them in our office.

Q. Captain, where were you most of the time on the return trip of the "Beaver" to San Francisco?

A. In the cabin-room—in the dining-room I should say; I think it is the dining-room, yes, it is the dining-room.

- Q. In the dining-room of the "Beaver"?
- A. Yes, sir.
- Q. Where is that situated with reference to the amidships, forward or abaft?
 - A. Just abaft of the engine-room.
 - Q. And is that abaft of amidships?
 - A. Yes, sir.
- Q. From your position could you have told whether the "Beaver" in making the trip back to San Francisco did any pitching, or not? A. I think so.
 - Q. Did she pitch?
 - A. Not to me, no, sir; I did not feel her pitching.

Mr. McCLANAHAN.—There is one question, Mr. Denman, which is not strictly rebuttal but which has reference to the matter I put Captain Lie on for the other day, the matter of the proof of loss.

Q. What kind of a new winch was this that was shipped to Hongkong and installed on the "Selja"?

A. It is an ordinary winch, just the same as the other winches on board of the "Selja." The dimensions were 8 by 10 or 9 by 10, I don't know which.

- Q. It was the common ordinary ship's winch, for such a ship of the "Selja's" type? A. Yes, sir.
- Q. Captain, how long was it after the collision before you boarded the "Beaver"?
 - A. Oh, it was about 35 minutes.
- Q. Will you take up your story from the time the "Selja's" starboard boat was smashed on the side and tell what you did from that time up to the time you got on the "Beaver." [1077—953]
- A. When the boat was smashed alongside I got hold of the after tackle of the boat and entered on board the "Selja" again. I saw that the forward deck was then awash; there was only a little bit of the forecastle standing out, I ran over to the port side and jumped overboard and swam over to one of the "Beaver's" boats and they picked me up. After I got into that boat I saw the second officer standing on the bridge of the "Selja" and I told him to jump overboard; but it seemed to me that he was so exhausted that he did not dare to do so, so we pulled back again—the "Beaver's" boat—pulled right up to the "Selja's" side and got hold of him, and as soon as we got away from the "Selja" she sank, she turned turtle and sank; and after she turned turtle and sank I knew there was somebody over on the other side, and we went across to the other side and picked them up-picked up some of the Chinese. I think there were two boats over there. Then after that was done we looked around a bit and then came back to the "Beaver," pulled back to the "Beaver."
 - Q. And then went on board? A. Yes, sir.

- Q. On what side of the "Beaver" did you go on board? A. On the starboard side.
 - Q. That would be the weather side?
 - A. The weather side.
- Q. From the time of the collision to the time you were on board the "Beaver," as you have stated, was Pt. Reyes or any land visible?
 - A. No land was visible when I was in the boat.
- Q. Did you see Pt. Reyes or any land after you got on board the "Beaver"?
- A. I did not see it before Captain Kidston pointed it out to me.
 - Q. When was that?
 - A. That was just when I came on board.
- Q. What did you go on board for at that time, Captain? [1078—954]
- A. While I was changing my clothes and talking to them down there I asked where she was bound to—
- Q. (Intg.) Just let me interrupt you, please. You say after you changed your clothes—when you came on the "Beaver" did you change your clothes?
 - A. Yes, oh, yes.
 - Q. Where did you go?
- A. I went into the chief Steward's room—I think it was the chief Steward's room, and I changed my clothes there, sitting there a long time.
 - Q. Where did you get the clothes you changed into?
- A. This man I mentioned before, a waiter or whoever he was, he was a passenger,—he was not on duty at that time, he told me he was going up to Portland on a vacation. He brought me a few pieces of clothes

San Francisco & Portland Steamship Co. 1267 (Testimony of Olaf Lie.)

now and then. It seemed to me he got them from somebody else.

- Q. Just tell me what he brought you.
- A. He brought me a pair of white shoes.
- Q. Did he bring everything all at one time?
- A. No, sir; first he brought me the shoes. He brought me a pair of underdrawers and a shirt and a pair of overalls.
 - Q. Not all together? A. No.
 - Q. One at a time? A. Yes.
 - Q. And you put those on in that room, did you?
 - A. Yes, sir.
 - Q. Then what did you do?
- A. I asked somebody where the "Beaver" was going, but they said they didn't know.
- Q. Pardon me, Captain: did you see your wife and children up to that time? A. Yes, sir.
 - Q. Where were they? A. In the same room.
 - Q. How long were you in that room?
 - A. I must have been in that room about 20 minutes.
- Q. Now, you say that somebody, while you were in that room made some statement? [1079—955]
- A. Yes. I asked the chief Steward, after I got my clothes on, if he knew where she was heading, where she was going to, and he said he did not know, and so I said, "I am going to find out; I am going to go on the bridge and ask the captain if he is going to Portland or to San Francisco"; and I went up and asked him about that, and he said—
- Q. (Intg.) Wait a minute; don't go so fast. What side of the bridge did you go up on?

- A. On the starboard side.
- Q. Was the "Beaver" at that time under way?
- A. Yes, sir.
- Q. Can you give us any idea what time this was, Captain?
- A. Oh, I should say somewhere about 10 minutes after 4. I should say it was, I did not look at a clock but I should judge it was about 10 minutes after 4.
- Q. Where did you land when you got on the bridge—what part of the bridge?
 - A. Just at the top of the ladder.
- Q. And is that the place where you had the conversation with Captain Kidston?
 - A. Yes. I never moved from there.
 - Q. You did not move from there?
- A. No, sir, except I just moved a few feet when the wireless operator came up and I was introduced to him.
- Q. Other than that you did not move from your position? A. No, sir.
 - Q. Was Captain Kidston there when you came up?
- A. No. He came toward me. He was standing somewhere about amidships of the vessel and he came toward me when I came up.
- Q. Did he come alone? A. Yes, sir.
- Q. Who else did you see on the bridge besides Captain Kidston?
- A. I saw two men. I thought one of them was the quartermaster, standing amidships, somewhere around the compass. [1080—956]
 - Q. How far is that from where you stood?

A. Oh, I don't know; it must have been somewhere about 10 feet, somewhere around there, although I could not say for certain.

Q. Did that man whom you saw standing amidships come toward you while you were conversing with Captain Kidston? A. No, sir.

Q. What other man did you see there?

A. I saw some man standing by the telegraph, looking forward.

Q. Would that be on either side of amidships, and if so, on which side?

A. It was a little around amidships, perhaps over to the starboard, I would not say for certain.

Q. How far was that from you?

A. About the same distance.

Q. Did that man come toward you during the conversation? A. No, sir.

Q. Now, Captain, give us your version of that conversation as you remember it.

A. Well, I asked Captain Kidston if he was going back to San Francisco and he said so, and he said he was very sorry that he put me out of a command. And then I asked him—I don't really remember if I asked him, but he said to me then that they know it in San Francisco now that the "Selja" is doomed, because the wireless operator came up at that time, he came and asked for some more orders, and I interfered a bit, and he said, "Oh, the 'Selja"; they know that in San Francisco now that she is doomed." He told me that he wanted to give me some better clothes to put on and he took me down to his room,

and I finally got some clothes from him. He gave me a suit of clothes. I think also he put a pair of shoes over to me and also a box of cigars. I remember that. Then he left again and went on the bridge.

[1081—957]

- Q. You say he put a pair of shoes to you; I thought you said a little while ago you had shoes?
- A. Yes, but I didn't take his shoes; I did not change shoes.
- Q. What did you mean when you said he put a pair of shoes to you?
- A. He took a pair of shoes out of his wardrobe and put them toward where I was standing and he said, "Help yourself." His clothes were rather big for me, compared with the stoutness, and his shoes were rather small; I didn't change the shoes at all.
- Q. And that, Captain, as I understand it, is all you remember of that conversation?
 - A. That is all I remember, yes, sir.
- Q. Didn't he say something about Pt. Reyes at that time?
- A. Oh, yes, I forgot that; he pointed to Pt. Reyes, and he said, "There is Pt. Reyes." It was about right off.
- Q. He says that you made some remark about taking soundings; you don't remember that?
 - A. I don't recollect it. I may have said so.
- Q. He also says that you said that you heard the whistle for 15 minutes and knew it was either the "Beaver" or the "Bear"; don't you remember saying that?

A. I don't remember saying so, no, sir, but I may have said that I thought it was either the "Beaver" or the "Bear" because the whistle itself indicated it was a large steamer, and I knew these vessels were going up to Portland, Oregon. I might have said so.

Q. Captain, did that swell of that day affect the speed of the "Selja"? A. No, sir.

Q. How did it affect her before on that day—during the night?

A. It did not affect her. She was running—we have had that swell, perhaps a little bigger, for at least 24 hours [1082—958] previous, but we were running our regular rate, 10½ or something like that, right along.

Q. 101/4 knots? A. Yes, sir.

Q. You have heard the statement made here by several witnesses produced for the "Beaver" to the effect that at the time the "Selja" was first seen she was lying in the trough of the sea; what have you got to say as to that statement?

A. No, she was not lying in the trough of the sea when I first sighted the "Beaver."

Q. Captain Lie, is it possible you said anything about the stopping of your vessel in that conversation on the bridge?

A. Yes, it is possible. I might have said that I stopped my engines 10 minutes after 3. I might have said something like that, but I don't recollect it.

Cross-examination.

Mr. DENMAN.—Q. Captain, you say you had that sea for some 24 hours prior to that time?

(Testimony of Olaf Lie.)

- A. I could not say exactly the number of hours, but we had had it.
 - Q. Well, anyway, for 12 hours? A. Yes, sir.
- Q. And you knew it would not affect the speed of your vessel because you had been running 101/4 knots?
 - A. I said that was our ordinary speed.
- Q. How could you tell what you run when you had been varying your speed during the previous 12 hours, from 10½ knots to 3 knots—how could you tell what you run?
 - A. I don't understand your question.
- Q. You stated that the reason you knew the swell had not affected your speed was because you had been running at 101/4 knots? A. Yes, sir. [1083—959]
- Q. How do you know what ground you covered if, as a matter of fact, you had been running at various speeds during the preceding 12 hours, for various periods of time? How could you tell whether it affected your speed or not, during that period? Have you ever added up all the number of knots for the number of hours that you ran?
- A. I don't mean that we slowed down the engines, I mean to say when we were running full speed, we were running that.
- Q. You ran into the fog before on that night, did you not—at 12 o'clock? A. Yes, sir.
 - Q. You did not run full speed in the fog, did you?
 - A. We ran full speed up to 5:30.
 - Q. Then you were running full speed in the fog?
 - A. Yes.

- Q. How could you tell from that time of the night whether or not the swell had added to your speed or had not added to it? How could you tell for a 5-hour run at night? You were in the fog, were you not?
 - A. I knew it by the log.
- Q. But the log is carried forward by the swell, is it not, as well as the ship?
- A. We looked at the log every four hours, and up to 4 o'clock I knew she was making the same speed as usual. After that I could not say exactly.
- Q. By the way, when you came in did you notice whether the sea was breaking on the 4-fathom bank?
 - A. No, sir; I was not on deck; I was in the cabin.
- Q. Didn't you notice whether it broke there, or not?
 - A. No, sir; I did not pay any attention to it.
 - Q. Don't you recollect saying anything about that?
 - A. No, sir.
 - Q. What is this book that you are speaking of?
- A. A lighthouse book issued by the American Government; lighthouses of the Pacific Coast. It also has the lighthouses [1084—960] of Japan, China and all those places—both in English and American.
- Q. How did that book describe the signal at Pt. Reyes?
- A. I think it said it was a first-class siren, 5 seconds blast and 35 seconds interval.
 - Q. Have you got the book?
 - A. No, I have not got the book here.
- Mr. McCLANAHAN.—Q. Is not that the book that is in my office, Captain?

(Testimony of Olaf Lie.)

A. That is not the same book as I have; that is more for sailing directions.

Mr. DENMAN.—Q. It is in the other book, is it?

A. Yes, sir.

Q. Which book did you consult? Can you get the other book right now and bring it in to me?

Mr. McCLANAHAN.—Is it the Coast Pilot-book?

Mr. DENMAN.—Q. Which one is it you consulted at that time?

A. I did not consult that book at that time, but I presume it is the same thing.

Q. What did you say that book described the signal to be?

A. A first-class siren—

Mr. McCLANAHAN.—Are you speaking of Pt. Reyes?

Mr. DENMAN.—Yes, Pt. Reyes.

A. Oh, Pt. Reyes—I beg your pardon. I thought you were speaking of Pt. Bonita.

Q. No, Pt. Reyes.

A. The book I had said it was a first-class steamwhistle, a 5-second blast, and 70 seconds interval.

Q. As a matter of fact, when you got there there was no steam-whistle there?

A. No. I found that out.

Q. And what was the blast you heard? [1085—961]

Mr. McCLANAHAN.—I object to that as improper cross-examination on rebuttal.

Mr. DENMAN.—You asked him these questions.

Mr. McCLANAHAN.—I beg your pardon.

Mr. DENMAN.—You asked him what whistle he got at 2:30.

Mr. McCLANAHAN.-No, I beg your pardon.

A. I found it to be 35 seconds interval, and a blast of about 2 or $2\frac{1}{2}$ seconds.

Mr. DENMAN.—Q. A whistle or a siren?

A. A siren.

Q. As I understand it, you changed your course at 2:50? A. Yes, sir.

Q. That was before the First Officer came on the bridge, was it not? A. Yes, sir.

Q. And you changed your course on the 2-whistle bearings from a siren that blew what?

Mr. McCLANAHAN.—I object to the question as improper cross-examination on rebuttal.

A. 35 seconds interval and 2 or $2\frac{1}{2}$ blast, I don't remember which. But I would like to say—

Mr. DENMAN.—Just a moment. What direction did you set your course for?

Mr. McCLANAHAN.—That is objected to as improper cross-examination on rebuttal.

A. I set it toward the light-ship.

Mr. DENMAN.—Q. Captain, you are familiar with these tide-tables, are you not (handing book to witness)?

A. Yes, sir.

Q. Will you give me the amount of full of the tide in feet from the previous low tide to high tide on that day—how [1086—962] much did the tide rise?

A. You mean up to 3:10 in the afternoon?

Q. What is the difference between the previous

(Testimony of Olaf Lie.)

low tide and the high tide, about the time of the collision?

Mr. McCLANAHAN.—At what point?

Mr. DENMAN.—At the San Francisco entrance?

Mr. McCLANAHAN.—At Fort Point?

Mr. DENMAN.—Yes.

- A. It was low water at 9:47 A. M., on that day, and the height of water was $3\frac{1}{2}$ feet; it was high water at 3:10 P. M., and the height of the water was 4.8; that makes a difference in the flood tide of 1.3 feet.
 - Q. That was the rise of the tide? A. Yes, sir.
 - Q. How many hours did it rise in?
 - A. That is 5 hours and 23 minutes.
- Q. Captain, you recollect the day that Mr. Frey read his statements, do you not, in Mr. Brown's office? A. Yes, sir.
- Q. Do you remember going to him immediately afterwards and asking him a certain question before he left the room? A. Yes, sir.
 - Q. What was that about?
- Mr. McCLANAHAN.—I object to that as immaterial.
- A. I asked him about the gratuity of the last voyage. I knew the officer got it and I didn't get it. That is the reason I asked him.
- Q. Do you recollect the day that Captain Kidston testified out there? A. I was there.
- Q. And do you recollect leaving the hall of the courthouse on that day with him and going down in the elevator with him [1087—963] and walking up the street with him to the corner of Market

San Francisco & Portland Steamship Co. 1277 (Testimony of Olaf Lie.)

and Seventh and then down Market Street away, when Mr. Hengstler and Mr. Page and I were behind?

A. I don't recollect that at all.

Q. Do you recollect you did not?

A. He was up there several days. I think I walked with him one day—yes, I think I did.

- Q. Do you recollect it was on the day he testified regarding the conversation on the bridge? Do you remember you talked to him about it?
 - A. No, I do not.
- Q. Do you remember you talked to him about the \$1,000 you received and how you exhausted it on account of the high cost of living in San Francisco?
- A. Now, I remember what I said: I said to Captain Kidston, that I could not stay here on my own expenses but the insurance company kept me here, the hull underwriters of the "Selja," and that I have already spent as much as I would cover in this case—that is, I mean my personal loss. That is what I said.
- Q. And do you remember speaking about the high cost of living here in San Francisco, how much it cost to live here?

 A. I think I did, yes.

Mr. McCLANAHAN.—That is our case.

(An adjournment was here taken until to-morrow, Tuesday, August 1, 1911, at 4:30 P. M.) [1088—964]

Tuesday, August 1st, 1911.

[Testimony of George Scott, for Claimant (in Surrebuttal).]

GEORGE SCOTT, called for claimant "Beaver" in surrebuttal, sworn.

Mr. DENMAN.—Q. Captain, what is your full name? A. George Scott.

- Q. What is your occupation?
- A. At present I am a bar pilot.
- Q. What is a bar pilot?
- A. A bar pilot is a man who pilots ships in and keeps them out of danger while entering San Francisco harbor.
 - Q. By whom are you commissioned?
- A. By the State of California, by the Governor of the State.
 - Q. Have you a federal commission also?
 - A. Yes, sir.
 - Q. How long have you been a bar pilot here?
 - A. Since 1893.
 - Q. What was your business before that?
 - A. Master of tow-boats.
 - Q. How long had you been master of tow-boats?
- A. Since 1878 up until 1893, until the latter part of 1893.
- Q. In and out of the bay of San Francisco before that time?

 A. Yes, sir, and coastwise.
 - Q. Coastwise on this coast? A. Yes, sir.
 - Q. With San Francisco as home port, I suppose?
 - A. Yes, sir.
 - Q. Do you recollect the day of November 22, 1910,

the day of the "Beaver"-"Selja" collision?

- A. Yes, sir.
- Q. Were you at sea the night before?
- A. Yes, sir.
- Q. On what?
- A. On the pilot boat "Pathfinder."
- Q. Do you recollect the condition of the weather on that night?

Mr. McCLANAHAN.—I object to the question as being [1089—965] improper surrebuttal, it appearing from the record that the claimant-respondent's case is pregnant with the subject matter of the question, to wit, the weather conditions on November 22, 1910, and it not appearing that any new matter covered by the question was brought out in rebuttal. I will add the further objection that the question is immaterial, irrelevant and incompetent.

A. Yes, sir.

Mr. DENMAN.—Q. What was the condition of the weather on that night, Captain?

Mr. McCLANAHAN.—We make the same objection to that.

Mr. DENMAN.—Is it the same objection all the way through to these questions?

Mr. McCLANAHAN.—The same objection all the way through so far. You will agree, will you, that the objection will apply to all this line of examination?

Mr. DENMAN.—I will agree that you have made the objection to all this line of examination, that all this line of examination is objected to.

- A. The wind was light south.
- Q. How was the sea?
- A. A heavy southwest swell.
- Q. Did you anchor that night? A. No, sir.
- Q. Why didn't you anchor?
- A. Well, we were afraid to anchor or to kedge, as the pilots say, for fear that we would either break our kedge line or our anchor or our windlass, the swell was so heavy that we did not think it was prudent to do so.
 - Q. Who was on the pilot boat that night?
- A. Captain McCulloch and Captain Swanson. [1090—966]
 - Q. How long did that rough weather continue?
- A. I don't know how long the rough weather continued, but it continued with us until we came in, until we boarded the Japanese steamer, which was between 12 and 1 o'clock that we passed Pt. Bonita.
 - Q. What Japanese steamer did you board?
- A. You've got me there, I couldn't tell you the name of it; it is a Japanese cruiser, the smallest one of the two.
- Q. There were two Japanese cruisers coming into port at that time? A. Yes, sir.
 - Q. And you piloted one?
 - A. Yes, sir, I piloted one, the smallest one.
 - Q. Who piloted the other?
 - A. Captain McCulloch.
 - Q. Who came in first?
 - A. The steamer that Captain McCulloch had.
 - Q. What was the condition of the sea outside

when you boarded the cruiser?

- A. The same condition, a very heavy swell and almost a calm.
 - Q. Almost a calm?
- A. Yes. We had to pull to the vessels in our yawl.
 - Q. Were you able to come in over the bar itself?
 - A. No, sir.
 - Q. How did you come in?
- A. We did not think it was prudent to come over the bar, we came in over the North Channel.
- Q. What was the condition of the bar as you came in over the North Channel?
- A. Well, the bar we could not see, but the condition of the 4-fathom bank, it was breaking the whole length of it.
 - Q. What marked the length of it?
- A. A red buoy on one end and a striped buoy on the other.
- Q. You say it was breaking the whole length of the bank [1091—967] between the two buoys?
- A. Yes, sir; that is, it was not continuous, but it would start from the outer end and work in; it would have a little interval and then keep going again and work in.
- Q. What effect did that have on your vessel as you approached the red buoy?
 - A. You mean in changing our course?
 - Q. Did she pitch?
- A. No, she rolled mostly, but it made this difference with us, with that heavy sea, going from there

to the light-ship we had to alter our course a point to the northward, it kept throwing the ship in toward the shallow water.

- Q. What condition was it coming through the channel itself? How was the sea as you came through the channel?
- A. It was rough. The breakers broke inside of the mid-channel buoy and the North Channel.
- Q. What direction did they strike your vessel as you went through?
 - A. On the starboard side, broadside almost.
 - Q. Did you ship any water coming in?
 - A. No, we did not ship any water.
- Q. Do you know whether the other vessel did, or not? A. I do not know that.
- Q. What time did you get into San Francisco Bay, do you recollect?
- A. We anchored about a quarter past one, or 10 minutes past one, something like that. I did not time it but I know it was something in that neighborhood.
- Q. Do you recollect seeing the "Beaver" going out?
- A. No, I do not recollect seeing the "Beaver" going out.
- Q. Captain, you have been a great many years outside the heads, here,—what can you say with regard to the reliability of [1092—968] whistle signals in the fog for determining the direction from which the sound comes?

Mr. McCLANAHAN.—Of course, it is understood

that my objection applies also to this question.

Mr. DENMAN.—Yes.

- A. Well, a whistle in a fog is very deceptive. You might think it was straight ahead or you might think it was to your left or to your right; when you go in the direction you think it is you find it after you have gone a little while somewhere else on the other side. Without you get a good loud whistle and a pretty fair atmosphere,—then you can locate it with some accuracy, but not until you have a good clear atmosphere.
- Q. What do you mean by a clear atmosphere? Is there such a thing as a lumpy fog?
- A. So that the fog is bunchy, or a tule fog; I mean an ordinary northwest fog.

Mr. DENMAN.—That is all.

Mr. McCLANAHAN.-No cross-examination.

[Testimony of Alexander Swanson, for Claimant (in Surrebuttal).]

ALEXANDER SWANSON, called for the claimant "Beaver" in surrebuttal, sworn.

Mr. DENMAN.—Q. Captain, what is your full name? A. Alexander Swanson.

- Q. What is your occupation? A. I am a pilot.
- Q. How long have you been a pilot?
- A. 21 years.
- Q. What sort of a pilot are you—what papers do you hold? A. Just a State pilot.
 - Q. You also hold a Federal pilot license?
 - A. No.
 - Q. You have been a State pilot for 21 years on

this bar? A. Yes, sir. [1093—969]

- Q. Are you the only licensed bar pilot to take in vessels? A. There are twenty bar pilots.
- Q. Do you recollect the day of the "Beaver""Selja" collision? A. Yes, sir.
 - Q. Do you recollect the night before that?
 - A. Yes, sir.
 - Q. Where were you on the night before that?
 - A. Out by the light-ship.
 - Q. Aboard the pilot boat?
 - A. Aboard the pilot boat.
- Q. Can you recollect the condition of the sea the night before?

Mr. McCLANAHAN.—I object to the question as being improper surrebuttal, it appearing by the record that the claimant-respondent's case is pregnant with the subject matter of the question—to wit, the weather conditions on November 22, 1910, and it not appearing that any new matter covered by the question was brought out in rebuttal; I will add the further objection that the question is immaterial, irrelevant and incompetent.

A. Yes.

Mr. McCLANAHAN.—The understanding will be, Mr. Denman, that my objection applies to all this line of examination, the same as with the other witness.

Mr. DENMAN.—Yes. And this is closing our case with reference to the conditions on the bar and in response to the testimony brought out on rebuttal given by the two fishermen.

Mr. McCLANAHAN.—We devoutly hope that it

(Testimony of Alexander Swanson.) is closing respondent's case.

Mr. DENMAN.—Q. What was the condition of the weather that night, Captain?

- A. The weather was foggy during the [1094—970] night before, it was foggy most of the night, and a very heavy swell; it was an extraordinary swell.
 - Q. How long did that swell continue?
- A. It continued—I came through the North Channel at one o'clock that day, and, of course, I could not tell after that. The condition coming through the North Channel was as heavy a swell as I ever came through there in.
 - Q. Was that on the 22d?
 - A. That was on the 22d.
 - Q. What vessel did you bring through?
 - A. The "Arizona."
 - Q. Anything happen to her?
- A. Well, she carried away her light screens, that is, the screens on the side. All obstructions that were on the side—the accommodation-ladder was split all to small pieces, and also it filled all the state-rooms and there was a kind of a general upheaval all around.
 - Q. Where did this occur?
 - A. Right in the North Channel.
 - Q. What caused this?
- A. There was an extraordinary heavy break on the bar.
- Q. What is that portion of the bar called that is just off to the west of the North Channel?

- A. The Potato Patch.
- Q. What was the condition of the Potato Patch as you went by?
- A. One steady break, one steady break of white water.
- Q. What do you mean by one steady break? Did it mark the limits of the Potato Patch?
- A. The Potato Patch is the shallowest spot outside the North Channel. The breakers commence from about four miles out and it comes in a straight row from there to the North Channel. The shallowest spot is on the inside of that.
 - Q. Do you recollect what time you anchored?
- A. I anchored a little after one o'clock. I have not got the time exact. I know the "Maru" just came down from the [1095—971] dock and she leaves at one o'clock. That is how I can place the time, unless I went down and looked at the records I could not place the time exactly. I know it must have been about 15 minutes or so after one o'clock because she just came down by us.
 - Q. Did you see the "Beaver" going out that day?
- A. I met the "Beaver" in between the Heads, I think between Pt. Diablo and Lime Point.
- Q. What can you say with reference to the intensity of this swell; was it greater or less than you have at that season of the year?
- A. Well, it was a little early in the year to have a real heavy swell but I could not say—I think we have had it before, but it very seldom comes as high as that in the month of November. We have it as a

rule in December and January. Then we have the heaviest swell. Although I have seen it in November just as high as that, every bit. Yes, I think I have; I have even seen it in October. It usually comes about twenty years apart, or something like that.

- Q. How large a vessel is the "Arizona"?
- A. She is 5,000 and over net tonnage; about 12,000 tons capacity; her bridge is about 30 or 35 feet above the water, the way she was loaded at that time.
 - Q. How high did the water come over you?
- A. Well, I thought it was 500 feet. I was with my hands up this way, and it filled up and came up to my shoes on top of the bridge. I was in the middle of the ship.
- Q. Would it have been possible to have crossed the 4-fathom bank in a 50-foot fishing boat while the sea was in the condition that you saw it?
- A. No, sir. There was no [1096—972] vessel in the world that was ever built that could go over that without damage, without danger of breaking down. There is a possibility that one of these torpedo boats that they build now to go under water, it is possible one of them could go over it, but nothing could go over that without breaking it all to pieces; I am sure of that.

Cross-examination.

Mr. McCLANAHAN.—Q. Is the "Arizona" a Government boat?

A. No, it belonged to the American-Hawaiian Line.

- Q. What "Maru" was it you saw just coming down when you came in?
 - A. The "Nippon Maru."
 - Q. She was going out to sea?
 - A. She was going out to sea.
 - Q. Where was it you met the "Beaver"?
- A. I think between—I have an idea that it was between Lime Point and Pt. Diablo.
 - Q. That is this side of the channel, is it not?
 - A. Yes, it is on the inside of the channel, yes.
 - Q. You know the steamship "Selja," don't you?
 - A. Yes; I have been a pilot on her.
- Q. And were you not refused pilotage on her two years ago?
- A. No. Two years ago I think I was a pilot on her. I am not so very sure about those dates, but I know I have been a pilot on the "Selja."
- Q. Do you remember being refused pilotage by Captain Lie? A. I cannot remember that, no.
 - Q. What is that?
 - A. No, I cannot remember it, that I was refused.
 - Q. Are you a member of the Pilots' Association?
 - A. Yes, sir.
 - Q. Who is the attorney for the association?
 - A. Mr. Denman is the attorney for the association.
- Q. When did Mr. Denman speak to you about this matter first? [1097—973]
 - A. This morning.
- Q. Had he ever spoken to you about the "Selja""Beaver" collision before? A. No.

[Testimony of J. E. McCulloch, for Claimant (in Surrebuttal).]

J. E. McCULLOCH, called for the claimant "Beaver," in surrebuttal, sworn.

Mr. DENMAN.—Q. Captain, what is your occupation? A. San Francisco bar pilot.

Q. How long have you been a bar pilot?

A. 18 years.

Q. You hold a State license? A. Yes, sir.

Q. And a Federal license?

A. A Federal license also.

Q. You recollect the day of the "Beaver"-"Selja" collision?

A. I recollect the "Beaver"-"Selja" collision, yes, sir.

Q. Do you recollect that that was on the 22d of November, 1910?

A. By referring to memory I know it was on the 22d because I came in with the Japanese man-of-war "Asama" on that day and after having arrived at anchorage found out that the "Beaver" had collided with the "Selja."

Q. How late in the afternoon did you find that out—when did you come ashore?

A. I came ashore about 4 P. M.

Q. Were you out the night before?

A. Yes, sir.

Q. What was the condition of the weather that night?

Mr. McCLANAHAN.—I object to the question as being improper surrebuttal, it appearing by the rec-

ord that the claimant-respondent's case is pregnant with the subject matter of the question, to wit, the weather conditions on November 22, 1910, and it not appearing that any new matter covered by the question was brought out in rebuttal, I will add the further objection that the question is immaterial, irrelevant and incompetent. [1098—974]

Mr. DENMAN.—It is stipulated that the same objection, as heretofore, will apply to all the questions along this line.

- A. I have no particular remembrance of the weather the night before. It was my first aboard and I was asleep most of the time.
- Q. What was the weather on the morning of that day?
- A. About 9 A. M. it was dead calm, heavy westerly swell, foggy.
- Q. How long did that weather continue, to your knowledge?
- A. The best way I can tell you how that continued would be by the duties I performed from that time on.
 - Q. What did you do, Captain?
- A. About breakfast time, 9 o'clock, on the pilot boat, two steamers came very close to us and we hailed them with a megaphone, asked them if they wanted a pilot, and they proceeded on to the westward of us at that time, and we by seeing their lower water lines concluded that they were two Japanese men-of-war, which we knew at that time were about due. We could not stop them by using the megaphone, and the weather was such that we could not

sail to them, but we kept on to the westward with our boats following them, and the pilot boat "America"-I think the "America," I won't be sure-but the pilot boat that had come out on that stage of the tide spoke us and told us that there were two Japanese men-of-war who had communicated with the port by wireless asking where they would find pilots. After that we knew that those two vessels which had passed us must be the two Japanese men-of-war. We worked as well as we could under the circumstances of the weather toward the light-ship, and about 10 o'clock we launched a yawl and I in the yawl with two seamen pulled out to the light-ship and found the two ships, both the "Asama" and the "Kasaji," anchored out to the westward of the lighthouse. [1099-975] These things are only memory and-

Q. (Intg.) But you finally got on board, did you?

A. I rode out in a boat and went on board the "Asama" and got on the bridge of her and the admiral of the "Asama" asked me if I would take him to port. I told him I would; I told him also that the bar was in such a condition that it was breaking—

Mr. McCLANAHAN.—I object to this as entirely

irrelevant and hearsay.

A. (Continuing.) Hearsay! How hearsay? I am not talking hearsay.

Mr. DENMAN.—Q. Just tell us how it was, Captain. That is an objection for the Court and not for you. What did you say to the admiral?

A. I said to the admiral, that the state of the bar was such that I could not take charge of both of his

ships, that I would require another pilot to have charge of his ship because we would need independent action as the state of the bar demanded it. said, "Very well, Captain, call for another pilot." I blew the whistle for another pilot, and Captain Scott, who was also attached to the "Pathfinder" at the time, put out from his boat, and we heaved up anchor and picked Captain Scott up on our way in from where they were anchored around the lightship. After having Captain Scott on board, and knowing that that was all straight, I straightened out my course for the No. 2 buoy, as it is now designated, Red Buov, on the outside of the bar. As we proceeded on that course the weather cleared a little, and seeing the breaking bar on our starboard side. and the heave of the swell having thrown me inside of my projected course, I hauled [1100-976] ship out one point by compass to pass outside of the red buoy, and without danger of going on to the bow of the bar between the two buoys. When I entered the North Channel everything there was smooth in the channel, but the west bank was breaking tremendously. It was breaking so that from the inside west bank buoy to North Head was one continuous run of white water, and, gentlemen, I tell you that when those Japanese officers saw that white water ahead of them, and not knowing where I was directing their ship, the ten officers in that turret fixed their eyes on me to see whether I was going to quiver in taking that ship through or no. There was a continuous line of white water from the west bank to the North San Francisco & Portland Steamship Co. 1293
(Testimony of J. E. McCulloch.)

Head, without a break at all, and I, knowing that there was sufficient water there, took their ship through.

- Q. Did you ship any water?
- A. I? No. My ship was 26 feet 6 draught, and she did not ship any water.
- Q. What other vessels came in at the same time—do you recollect?
 - A. The "Kasaji" was following me.
- Q. Did you see any other vessels coming in through the North Channel at that time?
 - A. No, not when I was passing through.
- Q. What was the condition of the weather at that time as you came in through the North Channel?
 - A. What does "weather" mean?
 - Q. I mean the atmosphere.
- A. The atmosphere—foggy, but sufficiently clear to see buoys as we approached them on the courses.
 - Q. What time did you get into the harbor?
- A. I anchored that ship at Meiggs' Wharf at about 1 o'clock.
 - Q. Where did you go then?
- A. From there to the man-of-war [1101—977] anchorage off Folsom Street—not Folsom Street—yes, Folsom and Harrison.
 - Q. And from there you went ashore?
 - A. Yes, sir, I got ashore about 4 o'clock.

Cross-examination.

Mr. McCLANAHAN.—Q. Captain, how do you spell the names of those two Japanese men-of-war?

A. "A-s-a-m-a"; "K-a-sa-g-i"—"K-a-s-a-g-i."

- Q. You are spelling it correctly, are you?
- A. How do I know. What are you asking me for —to spell Japanese correctly in English?
 - Q. That is what I asked you for.
 - A. Well, I cannot.
- Q. In other words, you cannot spell the names of the two Japanese ships?
- A. No, sir, not correctly as you want me to. I spell them as they are sounded to me.
- Q. Do you know whether they were the only two Japanese war-ships in the port at that time?
 - A. Do I know what?
 - Q. Read the question, Mr. Reporter.

(Question read by the Reporter.)

- A. No, sir, I do not. I don't know anything about that.
- Q. Do you know the names of any of the officers on the one you piloted in? A. No, sir, I do not.
- Q. What did you mean, Captain, when you said during the statement you have just made, that these things were only from memory—do you trust or distrust your memory as to these statements?
 - A. I don't distrust my memory, sir.
- Q. Then, what did you mean by this statement that these things were only from memory?
 - A. Read the statement, please.
- Q. Turn back, Mr. Reporter, and read that remark of the witness.

(Record read by the Reporter.) [1102—978]

A. What does memory mean? Memory is a remembrance of circumstance, and I remember those

things perfectly, so if you have any doubt—memory is simply a matter of memory, and I remember them. Do you want a dictionary meaning? Bring me a dictionary and let us see what memory means.

- Q. Then, we are to place no significance upon that statement?
- A. Yes, because that is straight from my memory, and my memory is not at fault, sir.
- Q. Captain, that was a pretty rough bar, was it, as you passed through the North Channel?
 - A. Yes, it was a pretty rough bar.
 - Q. Terrible rough?
- A. I don't know what you mean by terrible rough; and when you talk about a terrible rough bar you speak of something that you don't know anything at all about because you have never seen one.
- Q. Well, I am always willing to learn, Captain, and I am asking you if this was a terrible rough bar.
- A. Well, you cannot learn, sir, unless you got out there and see. That is the only way to learn a terrible rough bar. That bar at that time was so rough that I would not dare to bring a 22-foot ship through it.
- Q. In your judgment it was a terrible rough bar, then?
- A. I don't say anything at all about terrible, because I don't know anything at all about your meaning of these words. I tell you, sir, that I would not have brought a 22-foot ship over that bar on that day, knowing as much as I do about the bar. Ter-

(Testimony of J. E. McCulloch.) ribly has no meaning to me; terrible has no meaning to me

- Q. Would you have brought any kind of a ship over the bar?
- A. Yes, I would have brought a 10-foot ship over the bar and [1103—979] I know she would not have struck, and if she was not long enough to have turned over, I would have brought her over.
 - Q. What do you mean by a 10-foot ship?
 - A. 10-foot draught.
- Q. Was the bar breaking so as to impede the speed of the vessel that you were piloting?
 - A. Which way is the ship going, sir.
 - Q. I was not there, Captain; you were.
- A. I am not talking about my ship. I brought her through the North Channel because I would not take her to the bar. If you are asking any questions at all in regard to any other ship; my ship I took to the North Channel. I know nothing about the bar with my ship at all.
- Q. Would that bar, breaking as it was, impede the speed of your ship that you piloted, as she passed through the North Channel? A. The bar—
 - Q. (Intg.) Please answer the question.

Mr. DENMAN.—The question is not intelligible.

A. No, it is not intelligible. Your question is not intelligible, sir.

Mr. McCLANAHAN.—Q. In other words, the break of the bar had no effect on the ship you were bringing through the channel.

A. Through the North Channel, no, sir.

San Francisco & Portland Steamship Co. 1297 (Testimony of J. E. McCulloch.)

Q. None whatever?

A. None whatever. I am going though the North Channel, and the bar has no effect on the North Channel.

Q. Of course, when I say "bar" I mean the sea. You understand that, don't you?

A. No, sir, you are talking about the bar. I don't understand anything you want to put in except the bar. When you talk about a thing, talk about it as it is, no suggestive questions or anything else. My dear sir, I want you to understand one thing: the bar is a proposition [1164—980] which I don't think you know anything of at all about and your questions evidently show that you don't know anything about it.

Q. All right. Now, Captain, I will try to reframe the question so as to meet your ideas.

A. No, sir, meet your own, so that you can get something out of me if you want it.

Q. Would the sea breaking on the bar that day have any effect upon the speed of your vessel as she was being piloted through the North Channel?

A. My vessel? What are you talking about? The ship which I came in with—

Q. Yes, Captain.

A. Simply and solely and wholly my ship—is that it?

Q. Yes, Captain.

A. And without reference to any other ship?

Q. Yes, Captain.

A. All right. Will you note that, please, that all

this is simply in reference to my ship. Now, then, sir, now give me your question simply with reference to my ship.

Q. Mr. Reporter, please read to the witness my question.

(Question read by the Reporter.)

- A. Yes, sir, a very slight and almost imperceptible acceleration of her speed as she was at that time coming before the swell which was coming through the North Channel, by effect of the westerly swell which was in the ocean on the outside.
- Q. It would increase the speed of your ship a little? A. Almost imperceptibly.
 - Q. That is, you had a following swell, then?
 - A. A following swell, yes, sir.
- Q. Did it affect the ship on the way of abeam movement at all?
- A. If you wish to have any effect of the swell on abeam [1105—981] or any other way, take the chart, see the courses proceeded through the North Channel, figure out where the swell was striking her, get some expert who might figure it out decimally and then they might tell you something about it. I on the bridge knew very well what I was doing with my ship and was not bothering particularly about the following swell. I was bothering more about what was ahead of me, not what was behind me.
- Q. Now, Captain, will you please answer my question.
 - A. I don't know what your question is yet.
 - Q. Well, I will give it to you again, perhaps a little

(Testimony of J. E. McCulloch.)
more intelligibly. A. Probably.

- Q. I want to know whether the sea that was breaking over the bar as you passed through the North Channel affected your ship in its abeam movement; do you know what that means?
- A. At what position and at what particular time of my passage through that channel do you want to know the effect of the sea on that ship?
- Q. I want to know the effect of the sea on that ship on its beam at any time.
 - A. On her beam at any time?
 - Q. Yes, Captain.
- A. Well, you will have to get it down to a finer point than that, because you are taking things where I am changing my course to come out of the channel, to go into the channel and to proceed through the channel. You cannot get at any such thing with one question.
 - Q. Did it have any effect on your ship?
- A. Did what have any effect on my ship and at what time?
- Q. The swell, at any time, that was breaking over the bar.
- A. Yes, sir, when I was coming out of the North Channel it had such an effect that they had to secure everything on board of [1106—982] the vessel to protect themselves from having them break adrift when I was coming out of the North Channel with the sea from the west bank abeam of me.
 - Q. Did they have the life-lines out?
 - A. I am up in the pilot-house and I give orders

to see everything secured for passing through a dangerous sea. I know not at all what precautions they are taking. I have no time to go and see any of those things. My orders are supposed to be obeyed.

- Q. You just told us that everything was made secure on the ship there to keep it from being washed away.
- A. I did not tell you it was made secure; I told you I gave orders to make it secure.
 - Q. Did you order out the life-lines?
- A. I gave orders to the executive officer of that man-of-war to see that everything was secured for going through a rough sea, sir.
- Q. You are a member of the Pilots' Association, are you, Captain?
 - A. No, sir, I am a San Francisco bar pilot.
 - Q. Haven't the pilots an association?
 - A. No, sir, not that I know of.
 - Q. Do you know Captain Swanson?
 - A. Yes, I cruised with him.
 - Q. You and he are members of no association?
- A. Not at all, sir. He cruises in the same boat with me.
 - Q. He is not a member of any association?
- A. Not that I know of, only the San Francisco Pilots' Benevolent Association, if you mean that. That is the only association that I know of.
 - Q. What is that association?
- A. A benevolent association, with solely benevolent properties, the same as any other benevolent association. [1107—983]

- Q. They have no attorney, have they?
- A. No, sir, not that I know of.
- Q. How long have you known Captain Swanson?
- A. Oh, let me see. Does this have to be exact or is it a matter of memory? Will memory be allowed?
 - Q. Memory will be allowed.
- A. I think I have known Captain Swanson since 1881; I think that is about the time.
 - Q. How long have you and he been fellow pilots?
- A. Well, 18 years I have been a pilot, and he was a pilot before me; so it must be 18 years.
- Q. You have heard of the steamer "Selja," have you—the Norwegian steamer "Selja"?
- A. The only time I ever knew of the "Selja" was when I came ashore from that man-of-war and heard that the "Beaver" had run her down.
 - Q. You never heard of her before that?
- A. Never heard of her before that; I didn't know anything about her and have not known much about her since.
 - Q. And how long have you been a pilot here?
- A. 18 years. That must not be strange to you because I have not piloted only one of the O. & O. steamship boats ever since I have been 18 years a pilot. You must not think that is strange.
- Q. I have not asked you about piloting the "Selja"; I was simply asking you about your knowledge of the "Selja."
 - A. I don't know her; I never saw her.
 - Q. And never heard of her—I mean with this ex-

ception here? A. Oh, yes, put in your exceptions.

- Q. You never heard of her, except for this exception?
- A. That is the only time I ever remember having heard of her. [1108—984]

Mr. McCLANAHAN.—That is all, Captain.

Redirect Examination.

Mr. DENMAN.—Q. Captain, you recollect the fact, do you not, that I am your attorney as an individual, don't you?

- A. As an individual, yes.
- Q. But not attorney for your association?
- A. There is no association. You cannot find an association. If you can, you beat me—I would like to. Now, right here, may I say what I have to say?

Q. Yes.

- A. You can't do a darn thing for any of those twenty unless I say so, can you?
 - Q. I don't think so.
 - A. Well, where is the association—not much.

Recross-examination.

Mr. McCLANAHAN.—Q. What do you mean by "those twenty"—in your last statement here?

- A. Oh. I thought you had done with me?
- Q. I have not commenced with you yet.

Mr. DENMAN.—Q. Who are the twenty?

Mr. McCLANAHAN.—Just a moment, Mr. Denman. Please don't interject your remarks here.

Q. I want to know, Captain, what you meant when you used the expression "those twenty"?

San Francisco & Portland Steamship Co. 1303
(Testimony of J. E. McCulloch.)

A. How did I use it? Have you got that down too?

Q. Mr. Reporter, turn back and read that.

(Record read by the Reporter.)

A. Will you pardon me one moment? Gentlemen, I believe that most of you are lawyers—

Mr. DENMAN.—Is this outside the record? [1109—985]

Mr. McCLANAHAN.—No, it is inside.

A. (Continuing.) Well, I am not talking in the record, nor was I talking in the record after you discharged me; I was not talking in the record.

- Q. Now, Captain, having heard read to you-
- A. (Intg.) I am still on record?
- Q. Yes, still on record.

A. Now, I think I will distinctly state where this thing stands in regard to the twenty which I mentioned; we are not an association; under no consideration are we an association; but Mr. Denman, as he said there,—am I not belonging to you—what were the words you used?

Mr. DENMAN.—I said, was I not acting as your attorney?

A. (Continuing.) Yes, acting as my attorney. I said yes, he was so acting as my attorney, but he required my signature for anything which he had to do. Is that correct, sir?

Mr. DENMAN.—That is correct.

Mr. McCLANAHAN.—Q. Now, will you please answer my question; what did you mean by referring to "those twenty"?

- A. Because there are twenty pilots.
- A. You said they could not do anything without your signature?
- A. No, I did not; I said Mr. Denman could not do anything for me without my signature.
- Q. Well, what is you connection with the twenty pilots?
- A. I am simply one of the twenty San Francisco pilots.
 - Q. Are you the president of the pilots?
 - A. No, sir.
 - Q. The secretary? A. No, sir.
 - Q. Do you co-operate at all in your work?
 - A. Perhaps.
 - Q. Is there a pilots' trust here?
- A. No, sir, there is no pilots' trust here. [1110—986]

Mr. McCLANAHAN.—That is all.

Mr. DENMAN.—That is all.

The WITNESS.—Now, I want to speak again—

Mr. McCLANAHAN.—Put it down, Mr. Reporter.

The WITNESS.—Oh, yes, put it down again if I speak. Gentlemen, I want to tell you one thing—

Mr. DENMAN.—It is going in, Captain.

The WITNESS.—(Continuing.) All right. I want you to understand, sir, that the courtesies which you demand from the outside you do not extend to those you bring into you in here. You said, sir, that you were done with me.

Mr. McCLANAHAN.—I beg you pardon, Captain, I thought I had been courteous to you.

San Francisco & Portland Steamship Co. 1305 (Testimony of J. E. McCulloch.)

The WITNESS.—I beg your pardon, you did.

Mr. McCLANAHAN.—Haven't I been courteous to you, Captain?

The WITNESS.—No, sir, not in that matter, when you said you were done with me and then immediately referred to your Reporter.

Mr. DENMAN.—We tender to the libelant the use of the steamer "Beaver" for the purpose of maneuvering her to determine the course that she was pursuing when going ahead at 15 knots speed, or 12 knots speed, and the helm is put hard-a-port, and her propeller full speed astern.

Mr. McCLANAHAN.—We have no curiosity in the matter at all.

Mr. DENMAN.—And we will conduct the experiment ourselves, if our opponent does not, on Friday of this week, and thereafter put on witnesses to the experiment, inviting the expert [1111—987] witnesses for the libelant to witness the experiment.

Mr. McCLANAHAN.—We give you notice now that we shall object to any such evidence. We will be very glad to accept of your invitation, however, for a boat ride.

Mr. DENMAN.—Then I understand that if we go through with this experiment you will be present?

Mr. McCLANAHAN.—I myself—I don't know. I may be in by that time if this case keeps up much longer.

Mr. DENMAN.—But your side will be represented?

Mr. McCLANAHAN.-Not represented in the

way you are thinking of. We accept the invitation to go out on the "Beaver."

Mr. DENMAN.—I mean will you be present as counsel for the libelant?

Mr. McCLANAHAN.—No, not as counsel. I didn't know you were inviting me as counsel.

Mr. DENMAN.—We are inviting you as counsel to appear there at this experiment to determine what the vessel will do under the circumstances I have described.

Mr. McCLANAHAN.—I cannot be there as counsel.

Mr. DENMAN.—Will you be there as counsel subject to any objection you have to make to the experiment?

Mr. McCLANAHAN.—Yes. I don't know that I will be there myself but I will be represented, subject to any objection that we may make. As a matter of technical knowledge and information I should think that our experts should be very interested in that experiment. We will be glad to cooperate with you in making it along the lines of the questions that were put to them and answered by them.

(An adjournment was here taken until Thursday, August 3d, 1911, at 10:30 A. M.) [1112—988]

Thursday, August 3d, 1911.

[Testimony of A. G. McAdie, for Claimant (in Surrebuttal).]

A. G. McADIE called for the claimant "Beaver" in surrebuttal, sworn.

Mr. DENMAN.—Q. Professor McAdie, what posi-

tion do you hold?

- A. I have charge of the United States Weather Bureau in this section.
- Q. That is an appointive position, a federal appointive position? A. Yes, sir.
 - Q. In the Civil Service?
 - A. In the Civil Service.
 - Q. How long have you held that position?
 - A. About 15 years.
 - Q. How long have you been on this coast?
 - A. About 16 years.
 - Q. What are your duties in that position?
- A. To keep records, see that they are properly kept, relating to the weather and other allied conditions.
- Q. Do you recognize this document reading: "Tracing from Marigram of tide-gauge, Presidio, Cal., from 0^h November 21st, to 18^h November 22, 1910." A. Yes, sir.

Mr. McCLANAHAN.—What is the purpose of this examination, if you care to state it, Mr. Denman?

Mr. DENMAN.—The purpose is to show that your two fishermen were mistaken as to the condition of the bar on that day at the hour they crossed.

Mr. McCLANAHAN.—We will have to make the same objection to the testimony of this witness as it relates to any condition of weather or sea condition on that day as not surrebuttal. And we ask that the same objection that we made as to the testimony of the witnesses be inserted here, that is to say, we [1113—989] object to the question as being improper surrebuttal, it appearing by the record that the claimant-respondent's case is pregnant with the subject matter of the question, to wit, the weather conditions on November 22, 1910, and it not appearing that any new matter covered by the question was brought out in rebuttal; and I will add the further objection that the question is immaterial, irrelevant and incompetent.

Mr. DENMAN.—And that is understood as to all the witnesses we put on for this purpose?

Mr. McCLANAHAN.—If you are going to put them all on to establish the same thing it is. I understand that you stipulate that the objection may apply to all the examination, without the necessity of repeating it?

Mr. DENMAN.—Yes. And I will say, in this regard, that I did not have this information at the time that the fishermen were examined.

Q. What is that document, Professor?

A. This is a record of the tide-gauge, kept at the Presidio, under the auspices of the United States Coast and Geodetic Survey.

- Q. When did that first come into your possession?
- A. Sometime before the end of the year 1910.

San Francisco & Portland Steamship Co. 1309 (Testimony of A. G. McAdie.)

Q. What was the occasion of your receiving it?

A. Captain Westdahl in charge of the Coast Survey Office, in this city, called my attention to a peculiarity in the record at this point. I may say that we have been studying those things for sometime.

Q. Indicate the point:

A. At 4 o'clock in the morning, November 21, 1910, until 8:30 there was a peculiarity in the record. [1114—990]

Q. What did you discover in regard to that peculiarity in the curve? In the first place, what does it indicate?

A. It indicates a marked displacement of the level of the water in San Francisco bay at that point.

Mr. McCLANAHAN.—Q. And at that time, Professor?

A. At that time, yes; at that time, at that point. Mr. DENMAN.—Q. From what direction could that displacement come? Where would it be likely to come from?

Mr. McCLANAHAN.—Q. That is, Professor, if you know.

A. It could possibly come from many directions and from many sources.

Mr. DENMAN.—Q. Presuming now that there were no seismic disturbances in the bay itself, from what direction would the water have to come in order to create that mark on the instrument?

Mr. McCLANAHAN.—I raise the further objection that there is no evidence in the record that

would support the hypothesis of the question.

Mr. DENMAN.—Q. Presuming that there was no seismic disturbance in the bay itself, from what direction would the rise in the water have to come in order to make that mark on the record?

- A. Naturally from outside the heads.
- Q. That indicates a rising in the waters?
- A. Yes, a change in the level of the water.
- Q. Is that an unusual amount that was raised?
- A. I believe it is, as far as my knowledge of these records goes. Captain Westdahl can testify better as to that.
- Q. Did you make any examination to determine the cause of that sudden rise in the waters there?
 - A. Yes, sir. [1115—991]
 - Q. What examination did you make?
- A. We studied the record from a number of points on the coast, particularly with reference to atmospheric conditions and change in pressure.
 - Q. And what did you discover?
- A. We discovered that it was probably due to a squall which was noted at various points along the coast in this vicinity at that hour.
- Q. A squall—let me ask you, what did the barograph indicate at that time for these various places?
- A. It indicated a marked change in pressure and a squall.
- Q. That marked change in pressure was a heavying or lightening of the atmosphere; did it increase or decrease in its pressure?
 - A. The pressure fell and rose rapidly, making

what we would call a hooked or a marked fluctuation in the pressure curve. It was out of the ordinary.

- Q. It was out of the ordinary? A. Yes, sir.
- Q. That was noted in how many places?

A. In a number of places. I can specify the Chabot Observatory, the floor of this building, the Merchants Exchange, the roof of this building, the Merchants Exchange, the Lick Observatory, the Santa Clara College Observatory. And I also obtained records from points as far south as San Diego and as far north as Eureka.

- Q. Was there ever any official notice made of this occurrence?
- A. Yes, there was a report submitted to the Chief of the Weather Bureau.
 - Q. By whom? A. By myself. [1116—992]
 - Q. Was that subsequently printed?
 - A. Yes, sir.
- Q. Now, I ask you to examine the curve as it proceeds from that time until 5 o'clock on the afternoon of the 22d; what can you say as to the oscillation of the recording needle from the 21st to the time indicated on the 22d?

A. Well, from a study of this particular record with Captain Westdahl, at the Coast Survey Office, and from a study of other tidal records, we have come to the conclusion,—we have come to the conclusion—I may say both of us, although that may not be testimony—we have come to the conclusion that this is the record of the bar breaking and that this unusual

rise and fall of the level of the bay was due to that squall.

- Q. How severe does the bar appear to be breaking on the morning and afternoon of the 22d, as shown by that record?
 - A. I should say that it was a very heavy bar.
 - Q. A very heavy bar? A. Yes, sir.
 - Q. What time does it begin to be really heavy?
- A. Well, there is evidence of an increasing bar at the very beginning of the 22d; that would be midnight of the 21st—22d, and it is heavy right through, and particularly heavy on the afternoon of the 22d.
- Q. That heavy bar continues until 5 o'clock as shown there? A. Yes, continues on until 6.
- Q. That particular record you hold in your hand was the one sent you by Captain Westdahl?
 - A. Yes, sir.
- Q. And it began at the point indicated and ended at the point shown there? A. Yes, sir.
- Q. That is all there was to the record that was sent to you?
- A. This is a portion of a continuous record. This is all that [1117—993] was sent to me.
 - Q. Where is the continuous record, if you know?
 - A. I understand it has gone to Washington.
- Q. I presume you want to keep this for your office, do you not? A. Yes, sir.

Mr. DENMAN.—Mr. McClanahan, I have here a blue-print of that. Will you examine it? I want to put it in evidence.

Mr. McCLANAHAN.—There is no need of my

San Francisco & Portland Steamship Co. 1313 (Testimony of A. G. McAdie.) examining it if it is a blue-print.

Mr DENMAN.—You will accept it in lieu of the original?

Mr. McCLANAHAN.—I will not question that it

is a blue-print.

Mr. DENMAN.—Then I will offer that. It will be marked Claimant's Exhibit McAdie 1. You may take the witness.

Mr. McCLANAHAN.-No cross-examination.

[Testimony of F. Westdahl, for Claimant (in Surrebuttal).]

F. WESTDAHL called for the claimant "Beaver," in surrebuttal, sworn..

Mr. DENMAN.—Q. Captain Westdahl, where were you born? A. In Sweden.

Q. When did you first get your master's papers?

A. My first master's papers were in 1863, and first-class master's papers in 1864.

Q. You are connected with the Geodetic Survey now, are you not? A. Yes, sir.

Q. What vessels have you commanded in the last 10 years?

A. I have commanded the "Gedney," the "Mac-Arthur" and the "Pathfinder."

Q. What is your present position?

A. I am an assistant in the Coast Survey, in charge of the sub-office in San Francisco. [1118—994]

Q. What was the "Pathfinder"?

A. The "Pathfinder" was a steel steamer, about 600 tons; she is a coast and Geodetic Survey vessel.

- Q. Are you familiar with the instrument known as the marigraph? A. Yes, sir.
- Q. Is there one located in the Bay of San Francisco? A. Yes, sir.
 - Q. Whereabouts?
 - A. At the wharf at the Presidio.
 - Q. How long has it been there?
- A. I cannot answer that question exactly; it used to be in the early '50's at the Fort Point Wharf; from there it was transferred over to Sausalito, and from Sausalito back to the Presidio Wharf. It must have been over 20 years ago that it was transferred, as near as I can tell.
- Q. So it has been at the Presidio Wharf for about 20 years? A. Yes, sir.
 - Q. What does that instrument do?
 - A. It records the rise and fall of the water.
- Q. Does it record the oscillations of the water as caused by swell or sea in the ocean?

 A. Yes, sir.
- Q. Have you had any occasion to compare the records of the marigraph with the records kept by the lookouts at Pt. Lobos, with regard to the condition at the bar?

Mr. McCLANAHAN.—We will have to make the same objection to the testimony of this witness as it relates to any condition of weather or sea conditions on that day as not surrebuttal; that is to say, we object to the question as being improper surrebuttal, it appearing by the record that the claimant-respondent's case is pregnant with the subject matter [1119—995] of the question, to wit, the weather

San Francisco & Portland Steamship Co. 1315 (Testimony of F. Westdahl.)

conditions on November 22, 1910, and it not appearing that any new matter covered by the question was brought out in rebuttal. I will add the further objection that the question is immaterial, irrelevant and incompetent. And it is understood, Mr. Denman, that you stipulate that my objection applies to all the questions asked the witness on this same line and for the same purpose.

Mr. DENMAN.—Yes. And also let it appear that Mr. Denman states that he had no knowledge of any of these matters until after the fishermen had testified as to the condition of the bar:

A. Yes. In 1898 I-

Mr. McCLANAHAN.—(Intg.) Excuse me for interrupting you, Captain. I raise the further objection to that that it is calling for hearsay evidence in part. Now, you may answer the question, Captain. Excuse me for interrupting you.

A. (Continuing.) We have had a man stationed at Pt. Lobos looking after the condition of the bar, and afterwards comparing his records with the marigram—when it was taken off the instrument at the Presidio.

Mr. DENMAN.—Q. What was the result of that comparison?

Mr. McCLANAHAN.—We make the same objection, and calling for hearsay testimony.

A. We could tell when the bar was rough by the markings on the marigram.

Mr. DENMAN.—Q. Was there a close correspondence between the two observations?

Mr. McCLANAHAN.—That is objected to upon the same ground and because it is leading.

Mr. DENMAN.—Q. Was there or was there not a close correspondence [1120—996] between the two records?

- A. I have not personally examined that record.
- Q. You have not? A. No.
- Q. This is simply information from the office?
- A. Yes; it was during my absence from the office.
- Q. Have you a record of the marigraph for the month of July of this year?

Mr. McCLANAHAN.—I object to that as immaterial.

A. This is a tracing that I have made from the marigram for July, that has just been taken off the machine.

Mr. DENMAN.—Q. What do the tracings show?

Mr. McCLANAHAN.—I object to that upon the ground that the tracings speak for themselves. I should like to ask you, Captain, did you make those tracings?

- A. My clerk in the office made them.
- Q. You did not make them? A. No, sir.

Mr. McCLANAHAN.—I object to that as hearsay and not the best evidence.

Mr. DENMAN.—Are you going to make me bring the clerk here to show that the tracing corresponds with the original?

Mr. McCLANAHAN.—The tracing itself? Is not this the original?

San Francisco & Portland Steamship Co. 1317 (Testimony of F. Westdahl.)

The WITNESS.—This is the tracing from the original record.

Q. Who made the original?

A. The original is made from the machine, from the record.

Q. How did the tracing originate? You must have had some original from which you made the

tracing.

A. Yes, to be sure. The original is a long piece of paper that stays on the machine for one month, and this is a tracing from portions of it, simply to show one day in July when it [1121—997] was very smooth and another day to show the roughest day in July.

Mr. McCLANAHAN.—Now proceed. My objec-

tion stands.

Mr. DENMAN.—Just a moment. I want to make that clear. Do you insist that we bring the clerk here who made the tracing off the record of the marigraph itself?

Mr. McCLANAHAN.—No, I do not. I will take the captain's word for it that the tracing was made

by the clerk.

Mr. DENMAN.—Will you further stipulate that it is a correct tracing?

Mr. McCLANAHAN.—Q. You believe it to be correct, do you Captain? A. Yes, I do.

Mr. McCLANAHAN.—All right.

Mr. DENMAN.—Q. That tracing shows you say the maximum and the minimum of oscillations in the month of July of this year? A. Yes.

Mr. DENMAN.—We offer it in evidence and ask that it be marked as Claimant's Exhibit Westdahl 1.

Mr. McCLANAHAN.—We object to it as hearsay, and as immaterial, irrelevant and incompetent, having no bearing upon the issues in this case.

Mr. DENMAN.—Now, Mr. McClanahan, will you admit that is a correct copy of the record made by the marigraph for the month of July, for the days indicated on it?

Mr. McCLANAHAN.—I will not make any further admissions than I have.

Mr. DENMAN.—Then I will have to call the clerk here who actually made the transcription.

Mr. McCLANAHAN.—I don't think it is necessary if you will examine the record. [1122—998]

Mr. DENMAN.—You have made the objection that it is hearsay. It could be hearsay only on the theory that this man did not make it.

Mr. PAGE.—He asked Captain Westdahl if the tracing was correct, and the captain said yes, and then he said he accepted it.

Mr. DENMAN.—Q. Captain, will you examine this document marked Claimant's Exhibit McAdie 1 and tell me what it is?

A. This is a blue-print from a tracing that I had made from the marigram for November.

- Q. Did you examine the original marigram yourself on that day? A. Yes, sir.
 - Q. Is this a perfect copy of it? A. Yes, sir.
 - Q. Why was that copy made of that?

San Francisco & Portland Steamship Co. 1319 (Testimony of F. Westdahl.)

Mr. McCLANAHAN.—I object to that as immaterial.

A. Because it was unusual markings, indicating some disturbance.

Mr. DENMAN.—Q. What did you think it was when you first saw it?

- A. I thought it was an earthquake.
- Q. Did you report the matter to the Department?
- A. I did.
- Q. What did you subsequently discover it was?
- A. After consultation with Professor McAdie I found that similar markings having occurred on the biograph, we came to the conclusion that it was atmospheric pressure.
- Q. What did that cause, as shown on the marigraph?
 - A. It caused a rising and falling of the sea.
 - Q. Where was that first shown?
- A. It was first shown here at 5 o'clock—between 4 and 5 o'clock, on the morning of the 21st.
 - Q. On the morning of the 21st of November?
 - A. Yes, sir. [1123—999]
- Q. What happened after that continuing on through that day and the next, as shown by the marigraph?

A. Evidently the storm that was first indicated, the reverberations from it reached our tide-gauge here on November 22; that is, the subsequent reverberations in the water continued; it continued longer than this record shows, but this is all the record I took off. From the beginning to the end we could

not take it, that is, we could not get a longer one; this was just the width of the tracing. First, I wanted to show the smooth curve, then as this sudden disturbance took place, and then as it continued along here. It was just accident that we had the November 22d record of it. I intended to show simply this, the beginning of the disturbance.

Q. What does the marigram show with reference to the condition of the ocean on the 22d?

A. It shows that it was very rough, that there was a heavy swell.

Q. Suppose the master of the steamship "Arizona," of 12,000 tons displacement, should testify that while in the North Channel, coming in at the hour of say between 12 and one o'clock of the 22d, that a heavy sea came across the Potato Patch, washed his decks and carried away the screen of the side-lights, would you say that that was a thing reasonably to be expected at that time?

Mr. McCLANAHAN.—I object to the question further upon the ground that the hypothesis is not properly stated.

A. I should say that it was reasonable to expect it, especially if he got too near the 4-fathom bank, if he was not in the middle of the channel.

Mr. DENMAN.—Q. Now, Captain, suppose the sea were in the [1124—1000] condition indicated by the marigram there, would it be reasonable to expect that a vessel steaming at a 15-knot pace directly into the swell, would have her speed cut down 3 knots? Would that be a reasonable expectation?

San Francisco & Portland Steamship Co. 1321 (Testimony of F. Westdahl.)

A. I should say that the slip would amount to that much going into a head-sea.

Q. As shown by the marigram?

A. The roughness of the water is shown by this marigram, yes.

Q. What will you say as to the condition of the sea as shown by the marigram on the 22d, with reference to other days, was it usual or unusual?

A. It was unusual.

Q. Have you had any records that were worse than that, that you can recall?

A. Well, that is very hard to tell. From my general experience with the tide record, I would say that this was a very rough swell. It is not unusual in our winter storms; we have many markings like this.

Q. In stormy weather?

A. Yes. I will state, furthermore, in connection with that, that we sometimes have a storm off the coast that will come in here, it will make the sea rough, but there will not be any wind at all. The storm is off the coast and it sends the reverberations through the water. They are the ones that are marked on this marigram. It need not necessarily be a local storm.

Q. Presuming that it appears that there was no wind on that afternoon of the 22d, would that in any way affect your opinion as to the roughness of the water? A. No, sir.

Q. Let me ask you: what would be the condition of the 4-fathom bank on the morning of the 22d, at

say between 4 and 5 o'clock, as indicated by the marigram? [1125—1001]

Mr. McCLANAHAN.—I object to that upon the ground that it is calling for the conclusion of the witness, the witness having given no definite intimation that he had any knowledge as to how the bar was breaking, except from the paper that he holds in his hands.

Mr. DENMAN.—I am not asking him as to the bar itself, simply as to the Potato Patch.

A. I should think it was rough on the 4-fathom bank. The 4-fathom bank breaks very much sooner than any other point on the bar, especially with an ebb tide. Sometimes with a northwest wind at the beginning of an ebb tide, the inner end of the 4-fathom bank will break.

Q. What can you say as to the condition of the 4-fathom bank between the hours of 3 and 5 o'clock in the afternoon of that day?

A. It must have been very heavy; it shows the greatest oscillations about that time.

Q. And is it conceivable that the 4-fathom bank was not breaking at that time, according to that marigram?

A. I should say not. It is not conceivable that it would not break.

Cross-examination.

Mr. McCLANAHAN.—Q. Your testimony, Captain, is based solely upon the marigraph, as to the condition of the 4-fathom bank? A. Yes, sir.

Q. And is dependent upon the verity of the mari-

San Francisco & Portland Steamship Co. 1323

(Testimony of F. Westdahl.)

graph? A. Yes, sir.

- Q. You have no personal knowledge of the 4-fathom bank's condition on that day, November 22?
 - A. No, sir, I did not see it. [1126-1002]
- Q. Suppose, Captain, there should be made to you a statement under oath that on the afternoon of November 22d, a boat passed over the Potato Patch and there were no breakers there, what would you say?
- A. I should say it must have been a very fortunate thing for the man in the boat that there were no breakers there at the time. I should think it almost incredible that there were no breakers on the 4-fathom bank at that time—from this record.
- Q. And yet if the man was one whose word you had no reason to doubt, you would feel obliged to take his evidence, would you not, as being true with reference to that?
- A. I should say it was very singular. I cannot state how I should take his evidence. My position is simply this, that it is made by a machine, and it is unbiased. We know that when the marigraph makes a record of this kind, we know that the bar is exceedingly rough and that it is breaking.
 - Q. The machine is at the Presidio, is it?
 - A. Yes, sir.
- Q. How far does the machine give you knowledge of the condition of the sea from the Presidio?
- A. I don't understand your question. The machine gives the indications through pulsations that come in through the Golden Gate.

- Q. At the Presidio? A. Yes, sir.
- Q. How far can you rely upon the machine to tell you the condition of the sea,—how far in distance?
- A. The machine at the wharf records what is taking place in the water, the risings and fallings in the sea.
- Q. Does it tell you what is taking place in Humboldt Bay? A. No. [1127—1003]
- Q. That is what I am trying to get at, how far can you rely upon the verity of the machine?
- A. I can rely upon the verity of the machine in the vicinity of San Francisco and all along the coast. Certainly, with a record of this kind from as far as Pt. Reyes clear down to Monterey, and for a long distance offshore.
 - Q. Not farther than Pt. Reyes north?
- A. Oh, yes. When the water is disturbed it transmits itself through long distances. For instance, we have records here when water is disturbed down in South America, it shows on our marigrams.
- Q. Is there not a diminution of the disturbance as the distance increases from the marigraph?
 - A. Why certainly, yes.
- Q. The machine shows most accurately right where it is in operation near the water? A. Yes.
- Q. And less accurately as the distance increases from the machine?
- A. Well—not less accurately, no, I should not say that.
 - Q. Less positively?

San Francisco & Portland Steamship Co. 1325 (Testimony of F. Westdahl.)

Mr. PAGE.—Less distinctly, I suppose.

Mr. McCLANAHAN.—Q. Less distinctly, is that it?

A. It is for the purpose of observing the rise and fall of the tide in San Francisco Bay that that machine is kept there. These markings show the condition of the sea outside, for the reason that our tides come in from the Pacific Ocean and come in through the narrow entrance at the Golden Gate, and when the ocean is largely disturbed, when large waves are coming in, they don't come in immediately through the Golden [1128-1004] Gate, they come in through pulsations. For instance, you can stand right by the machine, right near the machine, and when the machine is making these ordinary markings, you can look at the water and you cannot see any movement in it at all. These swells occupy about 5 minutes in passing. You cannot see them when you are standing alongside of that machine. bay may be absolutely smooth and yet these pulsations are recorded. They come in through the water through the Golden Gate.

- Q. Pulsations are particles of molecules of water, are they not? A. I suppose so.
- Q. And they would be manifested on the marigraph even if the sea were perfectly smooth?
 - A. At the station, yes.
 - Q. Yes, at the station? A. Yes, sir.
- Q. So that this marigram here does not purport to show more than the oscillation of the molecules of the water?

- A. That is an absolute rise and fall of the water.
- Q. Of the molecules?
- A. Well, of the water; of course, the water consists of molecules.
- Q. It might be possible, Captain, that that distrubance shown on your blue-print there took place in a perfectly smooth sea?
 - A. Not a smooth sea outside, no.
 - Q. What kind of a sea outside would it be?
 - A. It would be a heavy sea outside.
- Q. What do you mean by a heavy sea, a breaking sea?
- A. Yes, a breaking sea. A sea does not break until it strikes an obstruction.
 - Q. I mean a capped sea?
- -A. I would like to explain this: a breaking is caused by a wave hitting the bottom. The theory is [1129—1005] that a wave is a motion of the water, a rounding motion of the water; for instance, if I run my hand under a sheet, the water is not transmitted from place to place, the same amount of water; it is simply the motion of the water that is transmitted. When the bottom of the wave hits something shallow, the bottom is retarded and the top falls over. That is a breaking sea.
- Q. How do you explain a breaking sea where the wave motion does not reach as far as the bottom of the sea? That is caused by wind, is it not?
- A. Yes, the top of the wave is thrown off by the strong wind. That is what we call white-caps.
 - Q. Would your marigram in this portion showing

San Francisco & Portland Steamship Co. 1327

(Testimony of F. Westdahl.)

the greatest oscillations, tell you whether the sea was breaking or smooth where the wave motion had not reached the bottom, that is, out to sea?

- A. No, you cannot tell anything—for instance, you cannot tell—yes, you can tell. For instance, it would break probably where the oscillations were recorded as large as this, it would break probably in 6 or 7 fathoms of water.
 - Q. Would it break in more than that?
- A. That I cannot tell. I have seen the Pacific Ocean break in 9 fathoms of water, off Cape Mendocino. I cannot say I have seen it break in any deeper water than that.
- Q. Is no possible that the disturbance of the water out at sea, as shown by your instrument, was a disturbance accompanied by a perfectly smooth, long rolling swell, out at sea in deep water?
- A. Well, that is quite possible; and when that smooth deep long rolling swell hits shoal water it would break.
- Q. How long would you say the swells might be as shown by the oscillations on the blue-print out at sea in deep water?
 - A. You mean the distance between waves?
 - Q. Between the swells?
 - A. I could not say that. [1130-1006]
 - Q. Does not your blue-print give you any idea?
- A. No, sir, it does not, because that motion is communicated to this machine through a small hole as large as a pencil. In the first place, the marigraph is what we call a one-twelfth scale, it records, one-

twelfth of the actual size. For instance, this from there to there is about two-tenths of a foot; the actual wave that caused that would be 12 times that amount. It is communicated through this machine by means of a little hole in the bottom of a tube as large as this pencil (showing).

Mr. DENMAN.—Q. You mean by that, Captain, the size of the wave at the Presidio?

A. At the Presidio, yes.

Mr. McCLANAHAN.—Q. If, however, the oscillations were those accompanying a long, rolling swell in deep water at sea, do you mean to say, Captain, that that would affect the speed of a vessel through the water? A. Yes, if it is a head sea.

- Q. What would cause the diminution of speed?
- A. The fact of running into a head sea.
- Q. Now, we have a long rolling swell; is that what you call a head sea?
- A. Yes, that would be a head sea, if it is against you.
 - Q. How would it affect the boat?
- A. It would slow her down. It would cause more slip.
 - Q. Why? A. It would cause more slip.
- Q. You mean the propeller getting out of the water? A. No.
- Q. Why would it cause more slip if the propeller did not get out of the water?
- A. Because the swell has a tendency to set you back. The theoretical distance the propeller will [1131—1007] send the ship ahead is by its pitch.

You can compute that. But there is a slip to it if there is an obstruction against the vessel, and a head sea is certainly an obstruction against the ship.

- Q. In what way is it an obstruction? Do you know which way the wave movement is?
 - A. Yes, sir.
 - Q. Which way is it? A. How do you mean?
- Q. The wave movement. You said you knew. Is it up and down or is it horizontal?
- A. It is horizontal, of course, on the surface. It shows horizontal. What affects the vessel is the horizontal movement.
- Q. Is it horizontal? Is it not a fact, Captain, that the wave movement is perpendicular, up and down?
 - A. Yes, sir.
 - Q. And not horizontal?
 - A. It also moves horizontally.
 - Q. Did you ever test that? A. No.
- Q. You have seen sea-gulls at rest on the ocean, have you not? They don't move with the wave that passes along, do they? A. No.
- Q. What keeps them in their place? If the wave movement was horizontal, would they not pass with the wave?
- A. I think if you were to put an instrument on them and examine it you would find that they moved quite a little.
 - Q. You have never seen that done?
 - A. No, but common sense would tell me that.
- Q. But the greatest movement would be up and down—perpendicularly? A. Oh, to be sure, yes.

- Q. How would that perpendicular motion affect the speed of a vessel?
- A. The perpendicular movement itself would not affect the vessel so much, except by plunging down into [1132—1008] the sea, that would affect her.
- Q. It would affect the slip by exposing the propeller, would it not? A. Yes, sir.
 - Q. And that is the only way, is it not?
- A. There is a movement—there is a horizontal movement to any swell, and it would affect the vessel's speed.
- Q. And yet you are willing to admit that the perpendicular movement is greater?
- A. I don't know that I am willing to admit that exactly; that is something that I will not testify to under oath, because it is something that I am not familiar with. I have studied the theory of waves, that it is a circular motion communicated right under a continuous movement. The particles of water are not displaced, that is, the same particles of water remain here but the movement in the water proceeds.
- Q. Did I understand you, Captain, to testify in your direct examination that it would not be anything out of the way or unusual for a vessel to be retarded three knots, making 15 knots in a long rolling swell out at sea? A. Yes, I believe I said that.
- Q. And that would all come from the horizontal movement of the wave? A. Yes.
 - Q. That is simply your opinion?
 - A. That is my opinion, yes.
 - Q. You have never tried it?

San Francisco & Portland Steamship Co. 1331 (Testimony of F. Westdahl.)

A. No, I don't think I have ever tried it.

Q. We are speaking, of course, of the influence on the boat irrespective of any wind; is that your understanding of the situation?

A. Wind generally accompanies waves of that

character. [1133—1009]

Q. Did you have in mind wind when you spoke of the retardation of the 3 knots as being a possibility?

A. Yes, I think I had in mind both of them, both wind and sea.

Q. Both wind and sea? A. Yes, sir.

Redirect Examination.

Mr. DENMAN.—Q. Of course, Captain, the exposure of the propeller would diminish her rate of speed? A. Certainly.

Q. Presume, now, that the captain of the ship "Beaver" has testified that his ship, going into this sea, with a light wind, a negligible quantity of wind, was retarded from both the exposure of the propeller and the setting back of the sea 3 knots in 15, would you say that that was an unreasonable statement?

Mr. McCLANAHAN.—And the swell being a long

rolling swell, Captain?

Mr. DENMAN.—Such a swell as shown by the marigraph, and no wind, or little wind?

A. I should say that it is not an unreasonable statement; in fact, if I were in command of a vessel going into a sea of that kind I would cut her down voluntarily. I would not drive her into a sea of that kind.

Q. You are familiar, are you not, with the waters outside of the Bay here? A. Yes, sir.

Q. Have you done actual surveying work in the Coast Survey? A. Yes, sir.

Mr. McCLANAHAN.—I object to this line of examination as not proper redirect examination.

Mr. DENMAN.—Q. How many years have you spent at that? [1134—1010]

- A. I have been 44 years on the Coast Survey.
- Q. Your position is a federal office, is it not?
- A. Yes, sir.
- Q. An appointive position? A. Yes, sir.
- Q. Under the Civil Service? A. Yes, sir.

Mr. DENMAN.—I want to put in some testimony myself regarding the statements and admissions made by officers of the vessel who are libelling through Captain Lie, before United States Commissioner Brown, sitting for the Norwegian Consul, on the 26th day of November, 1910, on Saturday, four days after the collision.

Mr. McCLANAHAN.—Do I understand that this is in surrebuttal?

Mr. DENMAN.—No, not surrebuttal, but in the closing of our case. As I understand it, my theory of this case is that each of us has an affirmative case and each has a right to close his case.

Mr. McCLANAHAN.—I think the record shows that counsel for the respondent has closed his case sometime since. We object to this proposed statement by counsel as not being surrebuttal and as immaterial, irrelevant and incompetent. I suppose that it is intended to contradict the evidence of the

San Francisco & Portland Steamship Co. 1333

(Testimony of F. Westdahl.)

officers of the "Selja" taken in this case December 2d, 1910.

Mr. DENMAN.—In that connection I desire to testify as follows:

That on the day of this hearing before the Norwegion Consul, I was invited by someone in the office of the Consul to appear at the taking of this testimony, and while there [1135—1011] requested a copy of it to be made for me by the stenographer of Commissioner Brown in the usual method. I therefore took no notes of the evidence of those men and did not charge my mind with their statements. I was present at the taking of this testimony, and after it was over Mr. Lehner, the stenographer, informed me that he had been requested by Mr. McClanahan not to give me a copy of the testimony.

Mr. McCLANAHAN.—I move to strike that out as hearsay.

Mr. DENMAN.—This is to show diligence on our part to get the record for the purpose of cross-examining the witnesses the following week.

Mr. McCLANAHAN.—I move to strike out the testimony of what Mr. Lehner told the witness on the ground that it is hearsay.

Mr. DENMAN.—I thereupon asked Mr. McClanahan to furnish me with a copy of it, and he said he would not, nor would he give me permission to get a copy of it. I then asked Mr. Derby, his partner, for a copy, and he said that he would not accord us that privilege. We then commenced proceedings in perpetual entry in memoriam to obtain a copy of it,

which was resisted by the other side, and successfully resisted until after the departure of the Norwegian officers for abroad. We finally succeeded in getting a copy of it after we had made application to our Secretary of State to petition the Norwegian government for a copy.

I offer this testimony to show the reason why we were not in a position to cross-examine on this record at the time the testimony of the Norwegian officers was taken. The document from which I am now reading is a document left at my [1136—1012] office by someone from the Norwegian Consulate. Will you admit, Mr. McClanahan, that this is a copy of a statement of the "Selja's" officers made before United States Commisioner Brown, on the 26th day of November, 1910?

Mr. McCLANAHAN.—I cannot admit that.

Mr. DENMAN.—Was this copy made in your office, Mr. McClanahan?

Mr. McCLANAHAN.—No, sir, we had nothing to do with examination before Mr. Brown.

Mr. DENMAN.—Mr. McClanahan, have you seen the copy of the notes from which this was made since the testimony was taken before Mr. Brown?

Mr. McCLANAHAN.—I have not.

Mr. DENMAN.—The stenographer's original notes, have you not seen them?

Mr. McCLANAHAN.—No, I have not.

Mr. DENMAN.—Do you recollect that—

Mr. McCLANAHAN.—One moment. What are you doing? Are you examining me? Go on with

San Francisco & Portland Steamship Co. 1335 (Testimony of F. Westdahl.)

your evidence. I am an attorney in the case.

Mr. DENMAN.—I want to find out where the original notes are.

Mr. McCLANAHAN.—Well, I am objecting now as an attorney.

Mr. DENMAN.—Do you know where they are?

Mr. McCLANAHAN.—I decline to answer any questions coming from the witness.

Mr. DENMAN.—Well, presume for the moment that I am counsel in the case and that I have withdrawn from the witness-stand; now, I ask you, do you know where the original notes of Mr. Brown's stenographer are? [1137—1013]

Mr. McCLANAHAN.—I never saw them, I had never had them in my possession. I don't know where they are.

Mr. DENMAN.—Did you request Stenographer Bennett to give them up?

Mr. McCLANAHAN.—I decline to answer that question. What are you doing with me—putting me on the stand?

Mr. DENMAN.—I want to trace where they are.

Mr. McCLANAHAN.—Well, do it. I am not your detective. This is an unusual procedure, for me to be catechised here in this manner. I am not conducting your case. Proceed along the lines you see fit to, without asking my assistance. I will be as courteous to you as I can, but I am not finding evidence for you, good or bad.

Mr. DENMAN.—I will now address the question to Mr. Brown, the commissioner.

Mr. McCLANAHAN.—For the record?

Mr. DENMAN.—Yes.

Mr. McCLANAHAN.—Why do you have some questions you address in this offhand way in the record, and direct that others be left out? What is the point?

Mr. DENMAN.—Because I now discover that my question will bring forth some information that is of some value.

Q. Mr. Commissioner, is this document which I now show you a copy of the testimony taken before you as United States Commissioner on behalf of Henry Lund, Norwegian Consul at San Francisco?

The COMMISSIONER.—Of course, I could not tell accurately without comparing it with the original, but it has the general appearance of being a copy, if not a carbon, of the original. It has that appearance. I have no means of positively identifying it without a comparison. [1138—1014]

Mr. DENMAN.—Q. Who made this copy, do you know?

The COMMISSIONER.—I would assume that Mr. Lehner made it.

Mr. DENMAN.—Q. Do you know how many copies were made of that?

The COMMISSIONER.—I do not.

Mr. DENMAN.—We would have to put Mr. Lehner on the stand to find that out?

The COMMISSIONER.—Yes.

Mr. DENMAN.—Q. Do you know where Mr. Lehner's notes are?

San Francisco & Portland Steamship Co. 1337 (Testimony of F. Westdahl.)

A. I believe that they are in the custody of the Consul.

Mr. DENMAN.—Q. The Norwegian Consul? The COMMISSIONER.—Yes.

Mr. DENMAN.—Q. At whose request were they turned over to him?

The COMMISSIONER.—At the Consul's request.

Mr. DENMAN.—Q. Did you have any consultation with Mr. McClanahan about that?

The COMMISSIONER.—No; no consultation with Mr. McClanahan. The Consul himself appeared—the representative of the Consul.

Mr. DENMAN.—Mr. McClanahan, will you admit that this is a copy?

Mr. McCLANAHAN.—I cannot, Mr. Denman. I know nothing about it.

Mr. DENMAN.—Then, I am afraid I will have to put Mr. Lehner on the stand.

Mr. McCLANAHAN.—Perhaps I can make some other admissions for you. What do you want to testify to?

Mr. DENMAN.—I want to show certain admissions of your [1139—1015] clients concerning their conduct, and the various statements they made there. Are you willing to have them read into the record?

Mr. McCLANAHAN.-No.

Mr. DENMAN.—Then we will have to wait until Mr. Lehner is here.

Mr. McCLANAHAN.—I will consent that the proceedings, the testimony given before Commissioner

Brown, acting for the Norwegian Consul, being the testimony of the officers of the "Selja," be put into the record as a whole, and that the testimony given by the officers of the "Beaver" and the "Selja" before the United States Inspectors of Hulls and Boilers, be put in as a whole. Will you consent to my suggestion?

Mr. DENMAN.—I object to that because I had the opportunity of cross-examination in neither case. Before the United States Inspectors the rule is that on a preliminary hearing you cannot cross-examine, and that the only questions allowed are those put in writing and presented through the inspectors. It is impossible to cross-examine a witness under those conditions. Before the Norwegian Consul, through Commissioner, I had no opportunity of cross-examining at all. I object to having statements going in that are of a self-serving nature, without the right to cross-examine.

Mr. McCLANAHAN.—Do I understand, Mr. Denman, that you are now offering evidence to rebut the statements made by the "Selja's" officers in this case?

Mr. DENMAN.—I am offering it as admissions of the officers who are litigants here.

Mr. McCLANAHAN.—Not as rebuttal?

Mr. DENMAN.—You can take it as you please; it is evidence in the case. [1140—1016]

Mr. McCLANAHAN.—Do you appreciate that you have not laid any ground for rebuttal evidence of this kind?

Mr. DENMAN.—I am simply following the usual course of the Admiralty courts, to offer evidence that is of a pertinent nature.

Mr. McCLANAHAN.—I will have to let you proceed in your own way to get this in the record. This is testimony I know nothing about. I know nothing about the correctness of the copy you have. I suppose Mr. Lehner will testify to it, though. I suppose that when he comes on the stand he will testify that it is correct. You believe, Mr. Denman, and you admit, do you, that it is a true copy?

Mr. DENMAN.—I know nothing about it except that it was sent to my office.

Mr. McCLANAHAN.—You want us to admit something that we know nothing about, but you decline to admit it yourself. If you admit that it is a true copy I will admit that it is and you can go ahead.

Mr. DENMAN.—Yes, I will admit that this is what Mr. Lehner would testify to as being a true copy, if he were here. It is admitted by both parties, as I understand it, that this is a copy of the transcript of Mr. Lehner's notes, the testimony taken before Mr. Brown on the 26th day of November, 1910, acting for the Norwegian Consul.

Mr. McCLANAHAN.—We make the same objection now that we have made right along to this line of evidence; it is not surrebuttal and is immaterial, irrelevant and incompetent.

Mr. DENMAN.—The following question was put

to the witness Arvid Bjorn, the third officer of the "Selja":

- "Q. What was the course steered?
- A. That was south 60 [1141—1017] east. I am not quite sure of the course,—I won't say for sure.
 - Q. Was steam or hand steering gear shipped?
 - A. Steam-steering gear.
- Q. You say you are not quite sure of the course?
- A. No, because I was terribly busy with the whistle all the time, you know, and I had to listen for other whistles I could hear. I did not pay any attention to the compass because the captain was there; he was the man who looked after it."

Mr. McCLANAHAN.—We make the further objection to the evidence upon the ground that no proper foundation had been laid for impeaching the witness. I ask that the evidence be stricken from the record.

Mr. DENMAN.—This is the admission of a party as well as general evidence.

Now, I will read a question addressed to Captain Lie at the same hearing:

"Q. How, or what course, did she appear to be heading, and at what rate of speed did she appear to come?

A. I would say that when she struck my vessel she had about ten knots, and her course was then at right angles to our ship, but I did not look at my compass to see what she was heading;

San Francisco & Portland Steamship Co. 1341 (Testimony of F. Westdahl.)

you see she swung some, but I should say she was steering somewhere about west by—oh, I can't say, but I should judge it was crossing our bow somewhere about a point or two points."

Mr. McCLANAHAN.—The same objection, no proper foundation has been laid for impeachment, and I make the same motion to strike.

Mr. DENMAN.—I would say in regard to this, that Captain [1142—1018] Lie already has been asked if he gave this testimony, and he testified that he could not recollect whether he had or had not. That is as I recall his testimony.

Mr. McCLANAHAN.—I object to the statement of the witness on the ground that the record speaks for itself as to what Captain Lie has said and as to what he has been examined on. It is improper for counsel to insert at this time his view as to what the evidence of the witness was or has been.

Mr. DENMAN.—Counsel apologizes.

Mr. McCLANAHAN.—This double role of counsel and witness is a little confusing.

Mr. DENMAN.—My testimony has ceased and my opponent asked me whether I was then testifying as counsel or as witness.

Mr. McCLANAHAN.—In what capacity are you talking now—as counsel or as the witness?

Mr. DENMAN.—I am reading into the record these statements.

Mr. McCLANAHAN.—As counsel?

Mr. DENMAN.—Certainly as counsel.

Mr. McCLANAHAN.—And not as a witness?

Mr. DENMAN.—Certainly not as witness. I am doing it as counsel.

Mr. McCLANAHAN.—I understood that you were sworn and that you are now testifying as a witness in this case.

Mr. DENMAN.—I was sworn for the purpose of showing our diligence in attempting to get this document before we examined these witnesses. You suggested, just before that, that this was taken before the examination of the witnesses. I wanted to show why we did not have the document. [1143—1019]

Mr. McCLANAHAN.—Well, you are a witness in the case now, Mr. Denman, and I have a right to cross-examine you.

Mr. DENMAN.—That right is open to you. But I am not attempting to defeat any right of cross-examination that you have, but I am reading these things into the record.

Mr. McCLANAHAN.—You are attempting to change your status from witness to counsel.

Mr. DENMAN.—I changed it before.

I will read this question and answer: The question was addressed to Rambek Eggen at the same hearing, and the following answer was given by him:

"Q. What was the ship's rate of speed just preceding the accident?

A. The engine had been stopped about five minutes, so I should say there was no headway on her."

Mr. McCLANAHAN.—I make the same objection, no proper foundation has been laid for impeaching

the witness' testimony, and I make the same motion to strike.

- Mr. DENMAN.—The record also shows the following question and answer to and from Alfred Halbursen, first officer of the "Selja":
 - "Q. Give a statement, if you can, as to how it occurred, and the matters that preceded and followed it?
 - A. I was on deck when I heard three whistles, which called my attention to look around. I thought of some danger somewhere around in the neighborhood; just a little while afterwards, a few seconds, I saw the dark mass of the 'Beaver'—which proved to be the 'Beaver' afterwards—just a little after, a minute or so, the 'Beaver' struck us. She came in the direction something like a right angle on our ship as she was laying there. In a minute or so she struck us. It was a dense fog then." [1144—1020]
 - Q. How was the weather previous to and under the collision?
 - A. The weather was about the same as during the collision. dense fog, calm, and high westerly swell. * * *
 - Q. What was the ship's rate of speed at the time of the collision?
 - A. At the time of the collision I do not think she had any speed at all.
 - Q. Neither forward nor astern?
 - A. Well, during the collision the propeller

(Testimony of F. Westdahl.)

was working astern, but I do not think she had any speed either way; it is hard to tell, but I do not think she had speed either way."

Mr. McCLANAHAN.—I make the same objection and the same motion to strike.

Mr. DENMAN.—The next is a question addressed to Alfred Larsen, the second officer of the "Selja":

"Q. Please state how the collision occurred. Were you on deck?

A. Yes, sir, I was aft in the poop with the sounding machine.

Q. Will you state how the collision occurred, insofar as you can do so?

A. Yes. I had my work, I did not pay any attention to it, but I heard a whistle at 3 o'clock on the port bow, and about quarter past 3 I saw the steamer on the port side of us.

Q. She was coming toward you?

A. Yes, sir.

Q. At right angles to your course?

A. Yes, about that."

Mr. McCLANAHAN.—The same objection and the same motion to strike.

Mr. DENMAN.—I think that is all. [1145—1021]

Cross-examination.

Mr. McCLANAHAN.—Q. You were present at the time that the evidence of the "Selja's" officers was taken in my office, were you, Mr. Denman?

A. Yes.

Q. Representing the claimant and respondent in

this case? A. Yes.

- Q. Mr. Charles Page was there also in the same capacity, was he not? A. Yes.
- Q. You had abundant oppurtunity for cross-examining the officers at that time, did you not?

A. Yes.

- Q. You made no objection to your inability to examine them at that time, did you? A. No.
- Q. The paper that I hold in my hand is the transcript that you have been reading from, is it?

A. Yes.

Mr. McCLANAHAN.—We introduce that in evidence and ask that it be marked Libelants' Exhibit No. 24.

Mr. DENMAN.—We object to it upon the ground that it is hearsay and the self-serving statement of the officers taken at a hearing at which we had no right to cross-examine, and that it is irrelevant and incompetent. We move to strike it out upon the same grounds mentioned in the objection to its introduction.

Mr. McCLANAHAN.—We make the statement that the document is introduced to show the contents from which the excerpts have been read.

Mr. DENMAN.—Then we will move to strike out all portions of the document that are not in anyway explanatory of the matters put into the record by us.

Mr. McCLANAHAN.—Do I understand, now, that the claimant and respondent rests? [1146—1022]

Mr. DENMAN.—No, we will have another witness here at 2 o'clock.

(A recess was here taken until 2 P. M.)

AFTERNOON SESSION.

[Testimony of John Von Helms, for Claimant (in Surrebuttal).]

JOHN VON HELMS, called for the claimant "Beaver," in surrebuttal, sworn.

Mr. DENMAN.—Q. Captain, how old are you?

- A. I was 69 years old the last 28th of April.
- Q. How long have you been at sea?
- A. Since September 15, 1857.
- Q. When did you get your master's license?
- A. In the City of Hamburg Navigation School.
- Q. I say when? A. In 1864.
- Q. Have you been at sea ever since?
- A. Ever since.
- Q. What is your present occupation?
- A. I am a bar-pilot for the port of San Francisco.
- Q. That is a State office? A. A State office.
- Q. How many bar-pilots are there?
- A. Twenty at present.
- Q. They are the licensed pilots for taking ships in and out of port?
 - A. Yes, sir, licensed by the State of California.
 - Q. Have you a federal license also?
 - A. Yes, sir.
 - Q. How long have you been a pilot on this bar?
 - A. Going on 10 years.
 - Q. How long have you been going in and out of

this port? A. Since 1868.

Q. How was that,—coastwise or deep water? [1147—1023]

A. Mostly coast-wise and some deep water; one voyage to Tahiti and another one to Siberia. The rest was all coast-wise.

Q. How far down the Coast have you gone?

A. I have gone as far as Manzanita, Mexico, and up the Gulf of California; then I have been up as far as Vancouver.

- Q. Do you recollect the 22d day of November, 1910, the day of the collision between the "Beaver" and "Selja"?
 - A. Yes, I do sir.
 - Q. Did you pilot any vessel on that day?
 - A. I was on the "Nippon Maru" taking her to sea.
 - Q. What time did you leave the dock?
 - A. We left Pier 42 at one o'clock in the afternoon.
 - Q. What happened then?
- A. We steamed down the bay and we were detained off Meiggs' Wharf by the Japanese fleet arriving, and asked to stop for the Japanese mail.
 - Q. How long did you delay for the mail?
 - A. Some 40 minutes.
 - Q. What happened then?
- A. Then we started out down the bay but before we got down to Fort Point the fog shut in so dense that we were compelled to put back into the bay.
 - Q. From Fort Point? A. From Fort Point.
 - Q. How long did you remain in the bay?
 - A. We steamed into the bay about 2 miles, when

it cleared up again all of a sudden, and we thought there was a chance to go to sea and we steamed out again.

- Q. How far out did you go that time??
- A. This time we got as far as Pt. Diablo and then it shut down thick again.
- Q. Could you not see your way out from Pt. Diablo across the bar?
- A. Not a thing you couldn't see; you [1148—1024] couldn't see the length of the ship.
 - Q. Could you see the bar before the fog shut down?
 - A. Oh, yes.
 - Q. What was the condition of the bar at that time.

Mr. McCLANAHAN.—I object to the question as being improper surrebuttal; it appearing by the record that the claimant-respondent's case is pregnant with the subject matter of the question, to wit, the weather conditions on November 22, 1910, and it not appearing that any new matter covered by the question was brought out in rebuttal. And I will add the further objection that the question is immaterial, irrelevant and incompetent. Will it be stipulated, Mr. Denman, that the same objection will apply to all the questions along that line that you will ask of this witness?

Mr. DENMAN.—Yes.

- A. It was breaking heavy.
- Q. About what time was that?
- A. That was close on to 4 o'clock.
- Q. What did you do then?
- A. Then, being out so far, we stayed out, thinking

that perhaps there would be an opportunity to go through the North Channel, because it was absolutely impossible to take a ship out safely through the midchannel.

- Q. How long did you stay out there?
- A. We stayed out there until next morning at 8 o'clock.
 - Q. How did you go out then?
 - A. Then we went out through the North Channel.
- Q. What was the condition of the bar during that night?
- A. During that night it was breaking heavy all night long.
 - Q. Where did you anchor?
- A. We anchored—if you make a right angle from the Cliff House and set one end of it at the Cliff House and the other end at Mile Rock, we were lying [1149—1025] there, in about 20 fathoms of water, well to the southward to avoid the ships that might possibly come in in the mid-channel.
- Q. What can you say as to the condition of the sea, was it the usual or an unusual sea?
- A. Quite unusual; more than an average heavy swell.
- Q. You say that the bank was breaking around 4 o'clock, do you?
- A. Oh, sure. Where we could not see it we could hear it.
- Q. You could see it when you had reached Pt. Diablo. Could you see the bar then?
 - A. We could see it as we entered the Golden Gate

from Fort Point; passing Fort Point we could see the west bank breaking heavily.

Cross-examination.

Mr. McCLANAHAN.—Q. When did the "Nippon Maru" leave Meiggs' Wharf, Captain?

A. It was about—let me see—from one o'clock it took about 15 minutes to go down there; that was 1:15; and we delayed about 40 minutes there, so that makes it about 2:05 or 2:10, somewhere along there.

- Q. You left Meiggs' Wharf at 2:10?
- A. Somewhere about that.
- Q. And where were you intending to pass through to sea, through the North Channel or the Main Channel?
- A. Through the North Channel; I was aware then before we started from the wharf, that the bar was breaking heavy.
- Q. Excuse me, Captain, but I will ask you questions and you can answer them. Did you get into the North Channel on the first endeavor?
 - A. No. sir.
 - Q. You did not get as far as the North Channel?
 - A. No. sir.
 - Q. Because of the fog? A. Because of the fog.
- Q. How soon after leaving Meiggs' Wharf did the fog shut down [1150—1026] so thick?
 - A. Probably in about 20 minutes.
 - Q. And you say that was a dense fog?
 - A. Very dense, yes, sir.
- Q. And you could not see more than a ship's-length? A. Hardly that.

- Q. Did you anchor then?
- A. No, sir, we turned around and went back into the bay.
- Q. How far could you see at the time you turned around?
 - A. We could not see the length of the ship.
- Q. Did that fog continue until you got back to the bay?
- A. It continued until we got about 2 miles from Lime Point into the bay—or from Fort Point, which is the same distance.
 - Q. Then it seemed to lift?
 - A. No, sir. Then we waited there.
 - Q. How long did you wait?
- A. Perhaps some 20 minutes. We waited there before we anchored because we thought there might be a possibility of its clearing.
 - Q. What time was it that you anchored?
 - A. We did not anchor.
- Q. I thought you said you waited until you anchored?
- A. We waited there before we anchored, but we did not anchor, it cleared up.
- Q. What time did you arrive at that point that you thought of anchoring at?
 - A. When we stopped the ship?
 - Q. Yes. A. About 3 o'clock.
 - Q. About 3 o'clock? A. Yes, sir.
 - Q. And then it cleared up?
 - A. It cleared up of a sudden, yes.
 - Q. How long did it keep clear?

- A. Long enough for us to get down over to Pt. Diablo.
 - Q. Then what happened?
 - A. Then it shut down thick again.
 - Q. And it remained thick?
- A. It remained thick until 6 o'clock in the evening. [1151—1027]
- Q. What time was it that it shut down thick the second time?
- A. The second time it was somewhere about 4 o'clock, or a little after 4 o'clock, maybe; no, a little before 4 o'clock.
- Q. How long was the interval of time during which the fog had lifted?
- A. Probably half an hour; that is to say, the time it was foggy you mean?
 - Q. No, the time that it was not foggy.
- A. Oh, well, that is another thing; probably after the second time when we started to go out to sea the second time, it probably was clear about 20 minutes.
- Q. How far could you see in this fog the second time?
 - A. We could see probably 10 miles or so.
 - Q. In the second fog? A. No. in the clear time.
 - Q. I am talking about seeing in the second fog?
- A. Nothing. We could see only the length of the ship.
 - Q. Just about to the end of the ship?
 - A. Just the ship's length.
- Q. Did that condition extend into the North Channel?

A. We could not get into the North Channel, so I don't know; I could not see it.

- Q. When did you get into the North Channel, the next morning?
 - A. Yes, the next morning at 8 o'clock.
- Q. How far were you from the North Channel when you attempted to pass through the second time on the afternoon of November 22d before the fog shut down?
- A. When I passed Pt. Diablo it shut in thick. I did not attempt to enter the North Channel, at all.
- Q. How far were you from the North Channel at that time? A. About a mile and a half.
 - Q. And what hour was that?
- A. That was somewhere a little before 4 o'clock. [1152—1028]
- Q. And you didn't get nearer to the North Channel than a mile and a half at that time?
- A. Well, we passed out in the main channel and as much as you approach the line, certainly I should pass by the approach to the North Channel, you certainly get nearer to it.
- Q. How far were you from the Potato Patch at any time on November 22d?
 - A. The nearest we were to it was half a mile.
 - Q. On November 22d? A. Yes.
- Q. How far were you from the Potato Patch at the time the weather had cleared up for the first 20 minutes or 30 minutes? A. We were in the bay.
 - Q. Well, how far is that from the Potato Patch?
 - A. 4 miles and a quarter from where we were.

- Q. You know where the Potato Patch is, do you?
- A. Yes, somewhat: the so-called Potato Patch is a continuation of the west bank.
- Q. That is up to the left, if I may use the expression, of the North Channel as you pass out, is it not? A. Yes.

Redirect Examination

Mr. DENMAN.—Q. Captain, is it conceivable that the west bank is breaking and that the Potato Patch is not?

Mr. McCLANAHAN.—I object to the question as calling for the conclusion of the witness.

Mr. DENMAN.—That is just what I want to get.

- A. The west bank is the whole of it. The Potato Patch so-called, I don't really know where the boundaries are unless it is the whole west bank.
- Q. You could see the west bank you say when you were off Pt. Diablo? A. Yes, sir.
- Mr. McCLANAHAN.—I object to this as not proper redirect examination. [1153-1029]

Mr. DENMAN.—What was the condition of the west bank at that time?

Mr. McCLANAHAN.—I object to that upon the same ground, and I object to counsel's continuous restatement of questions on his redirect examination in the case of nearly all of his witnesses.

A. Breaking heavy.

Mr. DENMAN.—Q. Mr. McClanahan has asked you about passing out in the fog and you answered that you were half a mile from the Potato Patch; could you hear it breaking?

San Francisco & Portland Steamship Co. 1355 (Testimony of John Von Helms.)

Mr. McCLANAHAN.—I object to that upon the same ground, that it is not proper redirect examination.

A. Yes, sir.

Mr. DENMAN.—Q. Could you hear the bar as you lay there that night?

Mr. McCLANAHAN.—We make the same objection.

A. Yes, I could hear it heavily, I could hear the breakers breaking heavily.

Mr. DENMAN.—Q. You said in your cross-examination to Mr. McClanahan, that you could tell before you left Meiggs' Wharf that there was a heavy bar? A. Yes, sir.

Q. How is that?

Mr. McCLANAHAN.—I object to that as an improper statement of the witness' cross-examination.

A. We can tell in the first place off of Meiggs' Wharf when the vessels are tied up there, they surge about with what the sailor calls the undertow. It is caused by a very heavy swell maybe miles off, as it is on this bar, and it causes a current of water not perceptible on the surface of the water at all, but it throws a vessel from the wharf and then on again, causing perhaps a parting of all the ropes that she is fastened [1154—1030] with, as is frequently done down at Meiggs' Wharf.

Mr. McCLANAHAN.—I will ask counsel for claimant and respondent if this is the close of his case?

Mr. DENMAN.-No, we will have another wit-

(Testimony of Knowlson Townsend.) ness to-morrow morning at 10 o'clock.

(An adjournment was here taken until to-morrow Friday, August 4, 1911, at 10 A. M.) [1155—1031]

Friday, August 4th, 1911.

[Testimony of Knowlson Townsend, for Claimant (in Surrebutal).]

KNOWLSON TOWNSEND, called for the claimant "Beaver," in surrebuttal, sworn.

Mr. DENMAN.—Q. What is your occupation?

- A. Marine engineer.
- Q. Were you on the "Beaver" at the time of her collision with the "Selja"? A. Yes, sir.
 - Q. What position did you occupy then?
 - A. Second assitant engineer.
- Q. Can you tell me how many revolutions you ran from say after leaving Fort Point until the time of the collision, about how many revolutions your engine ran? A. About 77.
- Q. Did it go above that? A. No.
- Q. Were you in the engine-room during all of that time? A. Yes, sir.
 - Q. Up to the time of the collision?
 - A. Up to the time of the collision.
- Q. What was the condition of the sea, as indicated by the engines, after you got out to sea?

Mr. McCLANAHAN.—I object to the question as calling for the conclusion of the witness, he clearly showing by his evidence as occupying a position that it would be impossible for him to determine what the condition of the sea was. I also want to object to all

(Testimony of Knowlson Townsend.)

of this evidence as improper surrebuttal, and as being immaterial, irrelevant and incompetent.

A. Rough.

Mr. DENMAN.-Q. How could you tell that?

- A. By the engines racing quite frequently.
- Q. What about the motion of the ship? Was there any motion in the ship? [1156—1032]
 - A. Yes, sir.
 - Q. What was it? A. Pitching.
- Q. After the collision, and on your return voyage, were you still in the engine-room? A. Yes, sir.
- Q. What was the cut-off set for on the return voyage? A. 76.
 - Q. Did you go above that on the return voyage?
 - A. No; the cut-offs were not changed.

Cross-examination.

- Mr. McCLANAHAN.—Q. You mean to say, Mr. Townsend, that you can tell down in the engine-room whether the "Beaver" was pitching, or not?
 - A. Yes, sir.
- Q. Were the revolutions changed up to the time of the collision? A. Yes, sir.
- Q. Had you told Mr. Denman of the change, prior to coming into this room? A. No.
 - Q. You had not? A. No.
 - Q. Had he asked you? A. No.
- Q. How long before the collision were they changed?
 - A. If I remember right, about 15 minutes.
- Q. Why do you qualify that? Don't you know exactly the time that they were changed?

(Testimony of Knowlson Townsend.)

- A. I know the time they were changed, yes, sir.
- Q. What time were they changed,—3 o'clock?
- A. 3 o'clock.
- Q. And that was in response to an order?
- A. That was in response to an order, yes, sir.
- Q. From whom? A. From the chief engineer.
- Q. Did you note the time?
- A. Yes, but I could not remember it right to the minute.
 - Q. I say, did you note it? A. Yes, sir.
- Q. You are positive it was 3 o'clock. [1157—1033]
- A. Oh, no, I would not say to the minute. I put it down in the book, but I don't remember now what it was.
 - Q. You testified it was 3 o'clock?
 - A. Well, not right to the minute you know.
- Q. How far do you want to qualify your statement that it was 3 o'clock—a minute before 3 or a minute after 3—something like that?
 - A. It might have been that way, yes, sir.
- Q. Could it have been 5 minutes after or 5 minutes before 3?
- A. No, it was not before; oh, I could not say the exact time right to the minute.
- Q. You have testified it was 3 o'clock; how do you want to qualify that? Would you say it was more than 5 minutes after 3?
 - A. No, it was not more than 5 minutes after 3.
 - Q. You put it down at the time, did you?
 - A. Yes, sir, I did.

San Francisco & Portland Steamship Co. 1359

(Testimony of Knowlson Townsend.)

- Q. And you looked at the clock?
- A. Yes, sir, I looked at the clock.
- Q. And your memory now is that it was not more than 5 minutes after 3?
 - A. I would not say it was 5 minutes after 3.
- Q. Do I understand you would not say it was more than 5 minutes after 3?
 - A. It was around 3 o'clock.
 - Q. Could it have been more than 5 minutes past 3?
- A. I could not say; that is too far back to remember now.
- Q. Could it have been more than 10 minutes after 3.
 - A. No, it was less than 10 minutes after 3.
 - Q. It was less than 10 minutes after 3?
 - A. Yes, sir.
 - Q. Are you quite sure of that?
 - A. I am sure of that.
 - Q. How did you get the order?
 - A. From the chief engineer.
 - Q. How?
 - A. Through the speaking-tube. [1158—1034]
 - Q. What did he say?
 - A. Reduce the revolutions to 76.
 - Q. And what did you do?
 - A. I reduced them.
 - Q. How? A. With the cut-off.
 - Q. How long did it take you to reduce them to 76?
 - A. Oh, it would only take less than a minute.
 - Q. You mean to say that in a minute after that order, you reduced them to exactly 76?

(Testimony of Knowlson Townsend.)

- A. Yes, sir.
- Q. Did you not have to experiment at all?
- A. No.
- Q. If an order is given to you to put the engines at a certain number of revolutions, you can do it at once? A. We do it right away, yes, sir.
 - Q. And accomplish it at once? A. Yes, sir.
 - Q. Without experiment?
 - A. Without experiment.
 - Q. Are you sure of that? A. Sure of it.
 - Q. How long have you been an engineer?
 - A. I have been in the business about 15 years.
 - Q. How long have you held your papers?
 - A. Since 1902.
 - Q. Who are you working for now?
- A. The San Francisco & Portland Steamship Company, the "Beaver."
 - Q. You are on the "Beaver," are you?
 - A. Yes, sir.

Redirect Examination.

Mr. DENMAN.—Q. You made the entry in the book yourself, did you not? A. Yes, sir.

Q. And if you were to look at that book and saw that the entry 3:10, that would correct your memory as to what happened?

A. If I saw the book, yes, because I know I put it down.

Mr. DENMAN.—You will admit, Mr. McClanahan, that the book shows 3:10, will you not?

Mr. McCLANAHAN.-No.

San Francisco & Portland Steamship Co. 1361 (Testimony of David W. Dickie.)

Mr. DENMAN.—You have examined it, have you not?

Mr. McCLANAHAN.—I don't remember.

Mr. DENMAN.—That is all. [1159—1035]

Mr. McCLANAHAN.—Does the claimant and respondent close now?

Mr. DENMAN.—No, I want to examine Mr. Dickie. I understand there may be no need for our experiment with the vessel now at all.

[Testimony of David W. Dickie, for Claimant (Recalled in Surrebutal).]

DAVID W. DICKIE, recalled for the claimant "Beaver" in surrebuttal:

Mr. DENMAN.—Q. You remember Mr. Derby bringing you and your father and Mr. Heynemann over to my office yesterday afternoon?

Mr. McCLANAHAN.—I object to that as absolutely immaterial.

Mr. DENMAN.—Q. Do you recollect that, Mr. Dickie?

A. Yes. Let me state that correctly: I called up to McClanahan and Derby's office after the others, and the lady stenographer there told me that they had all gone over to Mr. Denman's office, and I followed on over to Mr. Denman's office.

Q. Well, I mean you remember having an amicable discussion there as to the conditions under which this trial experiment was to be made in the bay? A. Yes, sir.

Q. And in the course of that it appeared that there

(Testimony of David W. Dickie.)

had been a misunderstanding among all the parties as to the conditions under which the experiment was to be made and which had prevailed at the time of the collision? A. Yes, sir.

Mr. McCLANAHAN.—May I ask what is the purpose of this examination, Mr. Denman?

Mr. DENMAN.—The purposes of this examination is to show that the testimony has been given under a misapprehension of [1160—1036] fact, and that when the question is put to the experts, as it appears from the testimony of the captain in the record, they do not disagree with his results as to the direction in which the vessel will turn while reversing. And I want to further cross-examine Mr. Dickie for the purpose of bringing out this newly discovered matter.

Mr. McCLANAHAN.—We certainly deny that the evidence of our experts has been given under a misapprehension of the facts.

Mr. DENMAN.—Well, then, that forms an issue.

Q. Mr. Dickie, do you remember my preparing a question at this conference yesterday?

A. Yes, sir.

Q. Have you got the question as I prepared it for you?

A. I left it in the other room, I think; if you will excuse me a moment, I will get it. Now, I have it.

Mr. DENMAN.—You have looked over this question, have you, Mr. McClanahan?

Mr. McCLANAHAN.—I have seen the question.

Mr. DENMAN.—If the "Beaver" is making

(Testimony of David W. Dickie.)

13.572 knots through the water, and without reducing her speed changes her helm to starboard, and after her head under the starboard helm has swung one-half a point to port and the vessel has been steadied, and then her helm has been put hard-aport, and then her engines are stopped and put full speed astern, would the vessel under this maneuver be swinging rapidly to starboard at the end of one minute or a minute and a half, after her helm had been put hard-a-port?

Mr. McCLANAHAN.—We object to the question upon the ground that it is not surrebuttal; also it appearing from the record that counsel has had an abundance of opportunity on [1161—1037] his cross-examination of this expert, as well as of the others, to have fully and fairly covered the subject. We object, further upon the ground that the hypothesis is not properly stated. And further upon the ground that the question is immaterial, irrelevant and incompetent.

A. The answer to that question is that the ship would be swinging to starboard.

Mr. DENMAN.—Q. Could you say how much she would be swinging?

A. No, sir, that would vary. Supposing that experiment were made three times, and complying with the conditions given in the question, my opinion as an expert is that the result would be different each time in amount.

- Q. Quite a considerable difference, possibly?
- A. No, not a large difference, but there would be

(Testimony of David W. Dickie.) a difference each time, a small difference.

- Q. How much do you think the difference would be? A. I have not any idea.
- Q. And, of course, under different weather and different sea conditions there would be a difference also?

 A. There would be a difference.
- Q. Would you be in a position to deny that she would swing as much as 3 points in a minute and a half?
- A. No, I would not be in a position to deny that she would swing 3 points.
- Q. Let me put this question to you: The "Beaver" now has her helm wheel put to starboard and she swings half a point to port, then her helm wheel is put hard-to-port and her engines are reversed, and she is making at the time just prior to the reversing of the engines 13.572 knots, what would be the direction of the [1162—1038] swing of the vessel, to port or to starboard?

Mr. McCLANAHAN.—The same objection.

- A. I did not follow that question. I would like it read. (Question read by the Reporter.) You used the word "wheel" there, you meant "helm," didn't you?
- Mr. DENMAN.—Q. Yes. Now, the "Beaver" has her helm put to starboard, and she swings half a point to port, then her helm is put hard-to-port and her engines are reversed, and she is making at the time just prior to the reversing of the engines 13.572 knots, what would be the direction of the swing of the vessel, to port or to starboard?

San Francisco & Portland Steamship Co. 1365
(Testimony of David W. Dickie.)

Mr. McCLANAHAN.—The same objection that I made to the previous question, upon the same grounds.

A. There is a period there between 13.572 knots and 10 knots that we have no data for and we would have to depend on the energy delivered with the starboard helm holding the vessel on the port headway until it got down to 10 knots, in which case we think she would continue with the port helm, continue swinging to port.

Q. If, on the other hand, her energy caught her and swung her over to starboard before she got down to 10 knots, your opinion is she would continue to swing to starboard, is it?

Mr. McCLANAHAN.—We make the same objection.

Mr. DENMAN.—Q. So your answer to the question as I put it to you is that she might be going to port or she might be going to starboard, accordingly as the resultant of the forces say in dropping to 10 knots from 13.572, and if the resultant of the forces at that time when she reached 10 knots was swinging to starboard she would swing to starboard and if swinging to port she would swing to port?

A. Yes. [1163—1039]

Mr. McCLANAHAN.—I object to that, further, upon the ground that it is not intelligible.

Mr. DENMAN.—He said "yes" to it.

A. I believe that that would be the case, that the amount of energy given out between 133/4 knots, roughly, and 10 knots, would have such an effect on

(Testimony of David W. Dickie.)

the vessel that any effect after that would not be able to overcome the phenomena that was taking place at that time. Now, let me make that clear; the amount of energy given out at 14 knots is, roughly, about double I think of that given out at 10 knots. For example, it takes double the power to drive a ship 10 knots that it does to drive her 8 knots. Oh, it would be more than double at 14 knots.

- Q. If that is the case, then, of course you have a greatly increased sucking power of the wheel while she is reversing and throwing the water against the rudder, don't you, at 13\%4 knots over what it would be at 10 knots?
- Q. Yes, but there are three elements that come in there; your backing power of the wheel goes against your rudder; the reversing power of your engine turning your propeller over to the left, which the "Beaver" does when she is backing, gives you a stronger force below pulling the stern of the ship to port than the force above pulling the ship to starboard because your water is under a greater pressure below; and to these you have the force of the ship swinging to port as stated originally in question 15, as given. Now, your ship swinging to port and your water going against your rudder would balance and you would have remaining the force of the greater power of the lower part of your wheel compared with the upper part of [1164-1040] your wheel to swing your vessel to starboard.
- Q. Then really there are three forces very difficult of determination, are there not?

- A. Those three forces only come in in question 15 as originally stated. They do not come into the question where the words are used "when the ship was steadied."
- Q. If it appeared from the testimony of the helmsman that the vessel was steadied during that time—
 - A. (Intg.) Then you have only two forces.
- Q. And the resultant of those two forces might be that she might very well have turned to starboard?
- A. Yes, might very well be that she turned to starboard.
- Q. Mr. Dickie, you yesterday prepared and Mr. Derby handed to me, or you handed to me, a set of suggestions for the experiment to-day?
- A. Those were prepared by my father and acquiesced in by Mr. Heynemann and myself.
- Q. You say: "We suggest that the revolutions be put as near as possible at 70 revolutions, that they give a speed of 13.588 knots, at 11½ per cent, which we think is as close to the truth as can be got under smooth water conditions." That is correct, is it, for the "Beaver" as you understand it? A. Yes.

Mr. DENMAN.—Well, gentlemen, the matter that I hoped to prove by the experiment has been admitted by the experts, and probably would have been admitted had I realized what was in their minds at the time of the giving of the original testimony. So I see no reason for taking the "Beaver" out and attempting the experiment. [1165—1041]

Cross-examination.

Mr. McCLANAHAN.-Q. And why did you come

(Testimony of David W. Dickie.) to my office yesterday afternoon, Mr. Dickie?

- A. I came to your office with the understanding that there was to be an experiment to determine the answer to question 15, to see if the "Beaver" would comply with our answer to question 15.
- Q. And you went over to Mr. Denman's office with the understanding that that was to be threshed out, the conditions under which the experiment was to be made?
- A. That is what I went over to Mr. Denman's office for.
- Q. And you found you were confronted with a new situation? A. Yes, sir.

Mr. McCLANAHAN.—Does the claimant and respondent now close?

Mr. DENMAN.—The people at the Merchants' Exchange promised to have here this morning for us the Lookout at Pt. Lobos, and they so advised me at 8 o'clock last night, although they had some doubts of it earlier in the day. At a quarter to 10 I was advised that he could get nobody to relieve him. It will be necessary for me to subpoen him to bring him here. I can tell you what his testimony will be, or what I understand his testimony will be: it is to the effect that the bar was breaking all day on the 22d, and that his records will so show.

Mr. McCLANAHAN.—Mr. Denman, did you not say to Mr. Derby yesterday afternoon that you were not going to call the man at Pt. Lobos?

Mr. DENMAN.—I said that I thought I would not. [1166—1042]

Mr. McCLANAHAN.—Not that you thought you would not but didn't you say that you were not going to call him?

Mr. DENMAN.—No, I said I thought I would not call him.

Mr. McCLANAHAN.—I object very strenuously to any further continuance of this case. If the Court were here I would appeal to the Court, but we are helpless in the matter and have been helpless all through this long drawn-out trial simply because of the absence of the Court. I object strenuously to any further continuance of this case, especially when the statement shows that the evidence which is now proposed to be injected into the case is not surrebuttal. I have myself a very important case that is pressing for trial and it is not fair to counsel or to the Court or to all interested here that the case should be conducted in this dilatory manner.

Mr. DENMAN.—I do not consider that the case is conducted in a dilatory manner; it is conducted in the manner that is usually followed in the matter of these references. Also that evidence from time to time has been introduced, without objection, on the part of libelant Lie, appearing here by his counsel Hengstler, and has been put in from time to time with his full consent. Is that correct?

Mr. HENGSTLER.—I have not appeared here as counsel for Captain Lie in this proceeding. I think Mr. McClanahan is his counsel in this proceeding.

Mr. DENMAN.—Well, you appear for the persons suing for the cargo, do you not?

Mr. HENGSTLER.—Yes.

Mr. DENMAN.—And you have appeared here during the introduction of this testimony?

Mr. HENGSTLER.—Yes. [1167—1043]

Mr. McCLANAHAN.—Mr. Hengstler, you have not been able to attend all the hearings, have you?

Mr. HENGSTLER.—I think I attended all of them with one exception, when I was not notified of the hearing.

Mr. McCLANAHAN.—Well, what do you say, Mr. Denman? We are at your mercy.

Mr. DENMAN.—I will guarantee to finish my case by 3 o'clock Monday afternoon.

Mr. McCLANAHAN.—It is not fair to me to have this case dragged out in this way.

Mr. DENMAN.—We will not keep you more than 10 minutes in the direct examination and will not take you more than 200 feet from your office.

Mr. McCLANAHAN.—And I object to it, further, on the ground that it is merely cumulative as surrebuttal evidence. And from the statement made by Mr. Derby to me, you yourself stated that it was unnecessary to call that lookout.

Mr. DENMAN.—That is hearsay evidence, of course.

Mr. McCLANAHAN.—Well, Mr. Derby is here.

Mr. DENMAN.—But I don't intend to cross-examine Mr. Derby.

Mr. McCLANAHAN.—Well, Mr. Derby is surely to be congratulated on that.

San Francisco & Portland Steamship Co. 1371

Mr. DENMAN.—It may be that I will not be able to get him here.

Mr. McCLANAHAN.—Well, if you are in doubt as to whether you are going to be able to call your Pt. Lobos Lookout, why can you not close your case now subject to your calling him at a session to convene on Monday afternoon at one o'clock?

Mr. DENMAN.—Well, I will guarantee to close the case by 3 o'clock on Monday.

(An adjournment was here taken until Monday, August 7th, 1911, at one P. M.) [1168—1044]

Monday, August 7th, 1911.

D. W. DICKIE.

At my request I received a copy of the testimony given on Friday, August 4, 1911, in order to see that the answers were as I intended them and I find that on page 1040, the last question asked by Mr. Denman, and as answered by me, the question being:

"Q. If that is the case, then, of course, you have a greatly increased sucking power of the wheel while she is reversing and throwing the water against the rudder, don't you, at 133/4 knots over what it would be at 10 knots?"

And the answer:

"A. Yes, but there are three elements that come in there; your backing power of the wheel goes against your rudder; the reversing power of your engine turning your propeller over to the left, which the 'Beaver' does when she is backing, gives you a stronger force below pulling the stern of the ship to port than the force

(Testimony of David W. Dickie.)

above pulling the ship to starboard because your water is under a greater pressure below; and to these you have the force of the ship swinging to port as stated originally in question 15, as given."

Now, your ship swinging to port, and the greater power of the lower part of the wheel compared with the upper part of the wheel, would balance, and the water going against your rudder would swing the ship to port as originally stated in the answer to question 15.

Referring to the question asked by Mr. Denman, the last question on page 1037 and the first question on page 1039, I find that they are one and the same question with the exception [1169—1045] of the words "the vessel has been steadied" have been omitted in the last question referred to by me on page 1039, and that the answer to that question should read:

"There is a period there between 13.572 knots and 10 knots that we have no data for and we would have to depend on the energy delivered with the port helm as the action of the starboard helm is cancelled by the port helm, holding the vessel on the starboard headway until it got down to 10 knots, in which case we think it should continue with the port helm,—continue swinging to port."

Now, I may make a statement to the effect that in answering this question it is presupposing that the helm in being put hard-to-port remains there an (Testimony of David W. Dickie.)

appreciable time. It is possible to suppose a theoretical case in which no time would elapse between the helm being put hard-to-port and the reversing of the engine, but this is not a practical condition and we must suppose that some action takes place due to the helm being put hard-to-port.

Mr. DENMAN.—Your theory is, then,—

Mr. McCLANAHAN.—Now, just a moment. I object to any examination of the witness. Mr. Dickie has not been produced here by anybody. He has simply come here to make this correction.

Mr. DENMAN.—But he has changed his testimony and I am going to examine him upon it.

Mr. McCLANAHAN.—Well, he is your own witness, then.

Mr. DENMAN.—No, he is not, he has been produced here by you.

Mr. McCLANAHAN.—I beg your pardon. He has come here himself to explain his testimony. [1170—1046]

Mr. DENMAN.—Well, I want to ask him this question anyway: Q. Your theory is that if she were swinging to starboard, when she got to 10 knots she would keep on swinging for sometime afterwards; if she had that starboard momentum when she got there, she would keep on?

A. Yes; that is the theory as stated there.

[Testimony of John Hyslop, for Claimant (in Surrebuttal).]

JOHN HYSLOP, called for the claimant "Beaver" in surrebuttal, sworn.

Mr. DENMAN.—Q. Mr. Hyslop, what is your occupation?

- A. Marine Reporter for the Merchants' Exchange.
- Q. Where are you stationed? A. Pt. Lobos.
- Q. Where is Pt. Lobos; is that one of the southerly points at the entrance to the Bay of San Francisco?
 - A. Yes, sir, it is just west of Ft. Miley.
- Q. Between Ft. Miley and the Cliff House, is it not?
- A. No, it is just west of Ft. Miley. The Cliff House is to the south.
- Q. It is about half a mile to the Cliff House from there? A. No, about a quarter of a mile.
- Q. How long have you been stationed at that place? A. 36 years.
- Q. Have you been observing the bar during that time? A. Yes, sir.
- Q. Do you recollect the 22d day of November, 1910? A. Yes, sir.
 - Q. How do you recollect it?
- A. Well, most particularly by the two Japanese cruisers coming in; also the rough weather, the rough foggy weather.
- Q. Where did you see the Japanese cruisers coming in? [1171—1047]
 - A. Through the North Channel.
 - Q. About what time? A. About noon time.
 - Q. Had you been watching for them?
- A. Yes, we knew they were outside, somewhere in the vicinity, by the wireless, before.
 - Q. Did you see them coming down the channel?

A. No, not for the fog; they were right in the channel when I seen them.

Q. Did you notice anything peculiar about them?

A. Yes, they were rolling heavy; pitching considerable water.

Q. Could you tell from that distance whether their decks were being washed or whether it just came over the bow?

A. I feel confident that there were some seas went over the decks.

- Q. How far off was that, do you think?
- A. From me?
- Q. Yes. A. Three miles.
- Q. You might or might not be mistaken as to that?
 - A. No, I am not mistaken; I feel confident of it.
- Q. Let me ask you, how long did the weather continue rough that afternoon?
- A. Well, it was thick foggy weather and I could not see but—
- Q. (Intg.) How long did the sea continue rough that afternoon? How long did it continue rough? Did it cease that afternoon, or what was the condition of the sea?
- A. It was very rough and continued until late on the 23d anyway.
- Q. Until late on the 23d anyway; could you see the bar on that afternoon?
- A. Not on the 22d, but I could see the bank. The bank was breaking badly. [1172—1048]
 - Q. The bank was breaking badly?

- A. And judging from the surf on the beach the bar would be pretty sure to break.
- Q. Let me ask you: Is it possible that the bank at any time that afternoon, as you recollect the condition of the weather was not breaking? A. No.
- Q. Did you see the steamer "Arizona" on that day? A. No.
 - Q. Did you see the steamer-
- Mr. McCLANAHAN.—I object to the leading questions.
- Mr. DENMAN.—Q. Did you see any other steamers come in or go out on that day? A. No other.
- Q. Do you recollect any other steamer attempting to go out that day?
 - A. Yes, the "Nippon Maru."
- Q. What can you say about her, what happened to her?
- A. I know that she went out during the afternoon and I know she came back and anchored off the heads after dark. I could see her lights.
 - Q. Do you know how long she stayed there?
 - A. All night.
 - Q. Which way did she go out finally?
 - A. The North Channel.

Cross-examination.

Mr. McCLANAHAN.—Q. Do you know of your own knowledge the reason the "Nippon Maru" came back after once going out?

- A. Yes, because the bar was rough.
- Q. Is that your answer?
- A. Yes. I answered that question that night.

By the ship coming back I supposed that that was the reason, that she found the bar so heavy that she concluded to come back and wait until daylight, which was afterwards proved was so.

- Q. Is not that a supposition on your part—it is not your [1173—1049] knowledge—you supposed she came back because the bar was heavy?
 - A. That is right.
 - Q. That is right, you don't know it?
 - A. I know it now.
 - Q. But you didn't know it at the time?
 - A. I didn't know it at the instant I reported it.
- Q. You know it now from what somebody has told you?
- A. I know it from seeing her go out and seeing her come back, and knowing the bar was rough.
- Q. Well, how did you know that that was the reason why she came in after first going out? You just supposed it, didn't you?
- A. Yes, I supposed it, and I also had a pretty fair idea from the heavy swell on the beach, which was right close to me.
- Q. And you supposed that the heavy swell was what brought the ship back? A. Yes, sir.
- Q. When did Mr. Denman first speak to you about this matter of November 22d, 1910? To-day, wasn't it? A. That was the first time, yes, sir.
 - Q. That was the first time, wasn't it?
 - A. Yes, sir.
- Q. Why did you hesitate about answering the question?

A. Because somebody asked me if I remembered, or asked if I could come in, within this last 2 or 3 days, and there was nothing definite about my coming in until 11 o'clock to-day.

- Q. Who was it asked whether you could come in, or not? A. The manager of the Exchange.
 - Q. He didn't say what you were wanted for?
- A. Yes, he said it was something about the "Beaver" and the "Selja."
 - Q. Is that all he said?
 - A. That was all. [1174-1050]
- Q. You did not know any thing about the "Beaver" and the "Selia," did you?
- A. Well, yes, it has been talked about more or less at different times, the suddenness of the "Selja" going down, and so forth. It was in my mind all right.
- Q. You have given your reason for remembering November 22d and the condition of the weather on that day as being the fact that two Japanese liners came in: is that correct?

Mr. PAGE.—He said two Japanese cruisers.

Mr. McCLANAHAN.—Two cruisers.

A. Yes, I remember that was on the 22d, and I also remember of the "Beaver" coming back that night.

- Q. What was there strange about the "Beaver" coming back that night?
 - A. It was reported that she had sunk the ship.
 - Q. It was not reported that night, was it? d Wash
 - A. Yes, sir.

- Q. To you?
- A. It was reported that night in town.
- Q. I say was it reported to you?
- A. Not to me—yes, yes, it was reported by telephone to me, and I expected the "Beaver" to come back and I heard her whistle in the fog.
 - Q. And you knew her fog-whistle, did you?
- A. Yes. Knowing she was in the vicinity, yes, sir.
- Q. What ships came into this harbor on November 23d?
 - A. I would have to look at my record to see that.
- Q. You didn't bring the record to the city to-day, did you? A. That is, I would have to see—
 - Q. (Intg.) Answer my question, please.
- A. No, sir. The records are in the Merchants' Exchange.
- Q. You did not have to look at your records to find out about the Japanese cruisers coming in on November 22d, did you? [1175—1051]
 - A. Well, no, I didn't have to.
- Q. Now, tell me, without looking at your records, the date of some other ship coming into port? You can't do it, can you? A. No.
- Q. Was the fog very thick on the 22d of November? A. Yes, sir.
 - Q. How far could you see?
- A. Sometimes it would lift off a little and you could see across the heads, or about that.
 - Q. How far is that? A. 3 miles; about 3 miles.
 - Q. And at other times how far could you see?

- A. That day?
- Q. Yes. A. On the 22d of November?
- Q. Yes. A. That is about as far as I could see.
- Q. How far could you see when the fog had not lifted, when the fog was dense and it shut down?
- A. I say that it lifted off a little now and then sometimes.
- Q. And it was at that time when it lifted that you could see 3 miles? A. Yes, sir.
- Q. Now, I want to know how far you could see when it had not lifted, when it was down dense?
 - A. Not more than half a mile.
 - Q. Could you see that far?
 - A. Yes, or about that.
 - Q. All day long? A. Yes, sir.
- Q. How far is Pt. Lobos, where you are stationed, from the main channel? A. A mile and a half.
- Q. And these ships came in the main channel, did they not?
 - A. No, they came in the North Channel.
 - Q. How far are you from the North Channel?
 - A. About 3 miles.
 - Q. And you saw them come in that day?
 - A. Yes, sir.
- Q. They must have come in at a time when the fog had lifted?
- A. I just happened to catch them by just a glimpse; I did not see them for more than 2 or 3 minutes. [1176—1052]
- Q. And you could tell by a glimpse just what they were? A. Yes, sir.

- Q. There was not anything unusual in those vessels coming in that day, was there?
 - A. It was rough, yes, sir.
 - Q. Have you never seen the sea rough before?
- A. Well, it was odd for them to come down the North Channel. The reason they came in the North Channel is, as I take it, that it was rough and because there is the deepest water in the North Channel.
- Q. You don't know anything about their reason for coming in that way, do you?

Mr. DENMAN.—He said he supposed that was the reason.

Mr. McCLANAHAN.—Let the witness handle himself, Mr. Denman.

- A. I know that they came to the North Channel for deep water, for the deepest water.
- Q. How long have you been in consultation with Mr. Denman about this matter?
 - A. Not until only just now.
- Q. Well, how long just now? For how long a time?
- A. How long have I been in this office, do you mean?
- Q. I mean how long have you talked with Mr. Denman about this matter?
 - A. Not more than 10 minutes.
 - Q. Whereabouts? Where were you?
- A. Before we came here—I thought you meant here. I was in his office at about one o'clock.
 - Q. How long did you talk with him?

- A. Not more than 5 minutes.
- Q. And then you came here? A. Yes, sir.
- Q. Was the North Channel rough on that day?
- A. On the 22d?
- Q. Yes. A. Yes, sir. [1177—1053]
- Q. Could you see it? A. Yes, sir.
- Q. You saw it so plainly that you say you think that the Japanese war-ships had their decks washed with water? A. Yes, sir.
 - Q. In the North Channel? A. Yes, sir.
- Q. How far are you from the so-called Potato Patch? A. About 3 miles.
 - Q. Did you see the Potato Patch that day?
 - A. Yes, sir.
 - Q. All day long?
- A. No, just about the time that I seen the men-ofwar come in.
- Q. That is the only time that you saw the Potato Patch that day?
 - A. No, at different times. It lifted now and then.
 - Q. Did you ever see it in that condition before?
 - A. Yes, very often.
 - Q. Very often? A. Very often.
- Q. Do you want to give any time to the question for the refreshing of your memory about other vessels that have come in on stated occasions, giving the date of their arrival here?

 A. No.
- Q. You don't want to try to refresh your memory on that point? Do you mean to say that this 22d of November, when these two vessels came in, is the only occasion you can now think of when other ves-

sels came in, and give the dates of their coming?

- A. Only that I have been speaking about these vessels and have had them in my mind; that is all.
- Q. And you have them in your mind because of its being a rough day?

 A. Yes, sir.
- Q. And yet you have seen hundreds of such days just as rough?
- A. No. It is a very rare matter for two Japanese cruisers to come in. [1178—1054]
- Q. How did you know they were Japanese cruisers? I mean at that time, how did you know they were Japanese cruisers?
- A. By experience; knowing other vessels from cruisers.
- Q. If this was an odd experience, you did not have any other experience by which to judge, did you?
- A. Well, these large vessels coming through the North Channel was odd.

Redirect Examination.

Mr. DENMAN.—Q. Do you remember being rung up last week and asked the facts concerning this case? A. Yes, sir.

- Q. Over the telephone? A. Yes, sir.
- Q. Did you consult your records before coming down here? Did you look over your records?
 - A. Yes, sir; I looked at the 22d.
- Q. Do you recollect what that record shows as to the condition of the bar on that day?

 A. Yes, sir.
- Mr. McCLANAHAN.—I object to that as calling for hearsay evidence. The record speaks for itself. It is the best evidence.
 - Mr. DENMAN.—Q. What does your record show?

Mr. McCLANAHAN.—The same objection.

A. They show that the bar was rough.

Mr. DENMAN.—Q. Do you remember what day it was you were telephoned to?

A. From your office?

Q. No; you remember you were telephoned to last week by somebody, do you not? A. Yes, sir.

Q. Do you remember what day it was?

A. I think it was Thursday.

Q. Where did that telephone come from, do you recollect? A. The Merchants' Exchange.

Q. Do you recollect of a telephone received on Tuesday of last week from the Merchants' Exchange? [1179—1055]

A. No, not in regard to that.

Q. With regard to the condition of the weather and the sea on the 22d of November? A. Yes.

Q. Do you recollect the telephone received from Captain Kidston? A. Yes, sir.

Q. Do you recollect my clerk calling on you yester-day and getting a copy of your record from you?

A. Yes, sir.

Q. How many stations have you out there for the purpose of observing the bar? A. Two.

Q. Where are they?

A. One is as high as it can be on Pt. Lobos and the other is as near the beach as possible.

Q. When is one used, and when is the other used?

A. The lower one is used in foggy weather and the other one is used most of the time.

Q. In clear weather?

A. In clear weather, yes; clear and fair weather.

Recross-examination.

Mr. McCLANAHAN.—Q. Do you appreciate that I asked you about your prior knowledge of this date, November 22d, and you confined it simply to the conversation with Mr. Denman this morning in this office, and a little while this afternoon in his office, and now on his redirect examination, you have named two or three occasions when you received telephone messages about this matter; what is your explanation of that?

Mr. DENMAN.—I object to the question on the ground that it improperly states the condition of the record. Mr. McClanahan's first question was when he had first talked with me. You did not ask him anything about talking with anybody else, and that is the reason he hesitated so long. [1180—1056]

Mr. McCLANAHAN.—Q. Is that a proper explanation of your attitude?

A. Yes, sir. The first time I met Mr. Denman was within the last two hours.

Q. You did not think then that I was after the truth of the matter?

Mr. DENMAN.—I object to the question upon the ground that he answered accurately the question put to him.

Mr. McCLANAHAN.—Q. You knew I was after information, did you not, as to your knowledge of November 22d?

Mr. DENMAN.—I object to that upon the ground that he answered the question exactly as it was put

(Testimony of William Kidston.) to him by counsel.

Mr. McCLANAHAN.—Q. And though I confined my question to Mr. Denman, you did not care to tell me about these other conversations that you had had over the telephone with Captain Kidston and others?

Mr. DENMAN.—I object to that on the ground that you did not ask him about the other conversations.

Mr. McCLANAHAN.—Q. Do you care to answer the question or to make any explanation? A. No.

Mr. McCLANAHAN.—We will ask now whether claimant and respondent closes the case.

Mr. DENMAN.—Not yet. Take the stand, Captain Kidston.

[Testimony of William Kidston, for Claimant (Recalled in Surrebuttal).]

WILLIAM KIDSTON, recalled for the claimant "Beaver" in surrebuttal:

Mr. DENMAN.—Q. Captain Kidston, I want to ask you how long it would take you in your vessel, to pick up full speed, going at half speed, if you had full steam in your boilers?

Mr. McCLANAHAN.—I object to the question as not being [1181—1057] surrebuttal.

Mr. DENMAN.—I admit that it is not, but it is pertinent to the case and I am going to ask the privilege of the Court to reopen for this purpose.

Mr. McCLANAHAN.—And I object to it upon the further ground that it is immaterial.

A. I would say about 5 minutes.

Mr. DENMAN.—Q. Captain Kidston, could you

(Testimony of Captain Kidston.)

tell from the middle of the bridge, or within a radius of 10 feet from the center of the bridge of the "Selja" as she has been described here, whether or not the vessel had stopped in the water?

Mr. McCLANAHAN.—I object to that upon the ground that the Captain has shown no knowledge of the "Selja's" bridge, and any answer that be may give to that question is simply a supposition and is of no value; further, that it is not surrebuttal, and immaterial, irrelevant and incompetent.

Mr. DENMAN.—Q. Could you tell, Captain?

A. I could answer that question about by own bridge and about my own ship.

Q. Now, presuming that your own bridge extends from side to side of the ship, could you tell, without going to the side of the vessel, whether or not she stopped in the water?

Mr. McCLANAHAN.—We make the same objection.

A. On the bridge of the "Beaver" standing amidships, I could not tell without going to the end of the bridge or pretty near the end.

Mr. DENMAN.—Q. Could you do it within 5 feet of the center of the vessel? Could you, by moving 5 feet from the center of the vessel, tell whether or not the vessel had been stopped in the water? [1182—1058]

Mr. McCLANAHAN.—We make the same objection. A. No.

Mr. DENMAN.—Q. Do you recollect, Captain Lie meeting you, after your testimony, in the clerk's

(Testimony of Captain Kidston.)

office, regarding the conversations on the bridge?

Mr. McCLANAHAN.—I object to this upon the same ground, that it is not surrebuttal, and also on the further ground that it is evidently calling for some conversation or incident happening between Captain Kidston and Captain Lie and counsel well knows that Captain Lie has left this jurisdiction and is on his way to Norway.

Mr. DENMAN.—This is proper rebuttal.

A. I remember; yes.

Mr. McCLANAHAN.—And on the further ground that counsel assured me that Captain Lie could go without any danger of necessity of recalling him.

Mr. DENMAN.—Q. Do you recollect Captain Lie testifying as to any of that conversation here the other day? A. Yes, sir.

- Q. Did that conversation take place?
- A. Yes, sir.
- Q. Where did it take place?
- A. Walking down the sidewalk, after leaving the court.
 - Q. You and he left the courtroom together?
- A. We went down the elevator and out of the building together.
 - Q. Where did you go?
- A. I don't remember how far we walked down Market Street. We walked down until we came to a point where he left me to take a car, I think.
- Mr. McCLANAHAN.—Now, we will ask again whether the [1183—1059] claimant and respondent's case is closed.

Mr. DENMAN.—We admit that you have asked this question before and we now ask other counsel if they have any questions to put in behalf of their cases.

Mr. McCLANAHAN.—What other counsel are you referring to?

Mr. DENMAN.—To Brother Hengstler here, who is counsel for a good many.

Mr. HENGSTLER.—I have not any testimony to offer at the present time, but if the case is now closed on the subject of the liability for the collision I want it understood that, of course, it is subject to further testimony to be taken to prove the cargo losses. I suppose that is understood, is it not?

Mr. DENMAN.—It is, so far as we are concerned.
Mr. McCLANAHAN.—Why, certainly. Again I ask, does counsel close the case?

Mr. DENMAN.—It is closed as far as we are concerned.

Mr. McCLANAHAN.—And the case is closed as far as we are concerned.

Testimony closed. [1184—1060]

[Commissioner's Certificate to Testimony.]

United States of America, State and Northern District of California, City and County of San Francisco,—ss.

I, James P. Brown, a United States Commissioner for the Northern District of California, do hereby certify that in pursuance of the order of reference to take and report the testimony herein, that on Saturday, June 10th, Monday, June 12th, Wednesday, June 14th, Thursday, June 15th, Friday, June 16th, Saturday, June 17th, 1911, and Friday, July 21st, Saturday, July 22d, Monday, July 24th, Tuesday, July 25th, Wednesday, July 26th, Friday, July 28th, Saturday, July 29th, Monday, July 31st, 1911, and Tuesday, August 1st, Thursday, August 3d, Friday, August 4th, and Monday, August 7th, 1911, I was attended by Messrs McClanahan & Derby, as proctors for the libelants, Charles Page, Esq., and William Denman, Esq., as proctors for respondent, and L. T. Hengstler, Esq., as proctor for the claimants, and by the witnesses who were of sound mind and lawful age, and that the witnesses were by me first duly cautioned and sworn to testify the truth. the whole truth, and nothing but the truth in said cause; that said testimony was taken in shorthand by Edward Lehner and Charles R. Gagan, and afterwards reduced to typewriting.

IN WITNESS WHEREOF, I have hereunto subscribed my hand at my office in the City and County of San Francisco, State of California, this 15 day of September, 1911.

JAS. P. BROWN,

U. S. Commissioner, Northern District of California, at San Francisco.

[Endorsed]: Filed Dec. 11, 1913. W. B. Maling. By Lyle S. Morris, Deputy Clerk. [1185—1061]

[Opinion.]

In the District Court of the United States for the Northern District of California.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of Himself and the Owners and Crew of Said Steamship, Libelant.

VS.

The American Steamship "BEAVER,"

Libelee,

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA,"

Libelant.

VS.

The American Steamship "BEAVER,"

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP CO., a Corporation,

Claimant.

No. 15,130.

PORTLAND & ASIATIC STEAMSHIP COM-PANY, a Corporation,

Libelant.

VS.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Respondent.

- McCLANAHAN & DERBY, of San Francisco, California, Proctors for Libelant.
- ANDROS & HENGSTLER, of San Francisco, California, Proctors for Cargo.
- WILLIAM DENMAN, and PAGE, McCUTCHEN, KNIGHT & OLNEY, of San Francisco, California, Proctors for Respondent.
- R. S. BEAN, District Judge (of District of Oregon, by Assignment).

These are three causes against the steamship "Beaver" consolidated for trial. The main suit is brought by the master of the Norwegian steamship "Selja" on behalf of her owner, officers and crew to recover for the loss of the "Selja," her equipment, and the personal effects of the officers and crew.

[1186] The second is brought by way of an intervening libel on behalf of the owners of the cargo. The third is an independent suit in persona brought by the charterers of the "Selja" against the owners of the "Beaver" to recover for loss of freight.

At 3:16 o'clock on the afternoon of November 22, 1910, the "Selja" was sunk in a collision with the "Beaver" in a fog off the entrance to San Francisco Harbor, and the only question for decision at this time is the liability for such collision. It is admitted that the "Beaver" was at fault, because she was navigating at an immoderate rate of speed at the time, but it is claimed on her behalf that the "Selja" was also at fault, and, as a consequence, that the damage should be divided. A vast amount of testimony has been taken, elaborate arguments were made

and briefs filed discussing many interesting and important questions of law and fact, with marked ability and learning, but, in my judgment, the point at issue can be decided by the application of the law to facts admitted by the "Selja." The "Selja," in command of Captain Lie, was returning from an Oriental voyage, and at 3 P. M., on November 22, while enveloped in a dense fog a few miles off the entrance to San Francisco Harbor, and while going at a speed of six knots an hour, heard "seemingly dead ahead" a deep, distinct whistle, which the captain first mistook for the fog-whistle at Point Bonita, but which proved to be that of the "Beaver" on her regular voyage from San Francisco to Portland. Without stopping her engines or changing her course or speed, she continued on her course from 3:00 to 3:05 towards the whistle, which was being repeated at intervals of 55 seconds. At 3:05 she put her engines to slow speed, the whistle being repeated at regular intervals [1187] coming "seemingly nearer," but she did not know at that time where the whistle was nor what it signified, nor was its position ascertained except, as the captain says, "as well as could be in a fog." From 3:05 to 3:10 she continued in the direction of the whistle, dropping her speed from 6 knots at 3:05 to 31/2 or 4 knots at 3:10. At 3:10 her navigating officer first concluded that the whistle which he had been hearing at intervals of 55 seconds for the past ten minutes was that of an approaching steamer and stopped his engines, allowing the momentum of the vessel to carry her forward. At 3:13 the "Beaver" loomed up out of the fog for a short distance away, and at 3:16 the collision occurred.

Under these admitted facts the "Selja" was, in my opinion, clearly at fault for a violation of the second paragraph of Rule 16, regulating the navigation of vessels at sea (26 St. at L. 326), if not for a failure to maintain that rate of speed in a fog required by the law as laid down in the Belgian King (125 Fed. 869). Rule 16 provides that "a steam vessel hearing. apparently forward of her beam, the fog-signal of a vessel the position of which is not ascertained shall, so far as the circumstances of the case admit, stop her engines and navigate with caution until the danger of collision is over." The "Selja" heard a whistle apparently forward of her beam at 3:00 o'clock but continued her voyage for five minutes in the direction of the whistle without reducing her speed, and for ten minutes without stopping her engines, notwithstanding she continued to hear fivesecond automatic blasts of an approaching whistle at 55 second intervals, and without knowing either its position or distance. She thus not only failed to observe the rule on hearing the first [1188] whistle but repeatedly violated it at practically one minute intervals for the succeeding ten minutes. She was apparently navigating under former Article 18 of the Revised International Regulations (23 Stat. 4381). which required a vessel approaching another "so as to involve risk of collision, to slacken her speed or stop or reverse if necessary," and under which it was held that a steamship in a fog was not obliged to stop her engines on hearing the first whistle ahead, unless the proximity be such as to indicate immediate danger. (The Umbria, 166 U. S. 404–412; The Ludvig Holberg, 157 U. S. 60; The Blue Jacket, 144 U. S. 371.) This rule did not require any specific act to be done or left undone in a given case but only the exercise of good judgment and seamanship, but Rule 18 has been superseded by Rule 16, which imposes a positive duty upon a vessel hearing apparently forward of her beam the fog signal of a vessel, the position of which is not ascertained, to immediately stop her engines and then navigate with caution. It is no longer a question whether the master exercises good judgment in a given case, but his conduct is governed by positive law.

The respondent claims that Rule 16 should be so interpreted that the requirement to stop the engine is not obligatory if the position of the approaching vessel is ascertained "with reference to danger of collision by an approximate of accuracy," but this would leave the law substantially the same as it was prior to the adoption of the rule, and would not accomplish the purpose intended by its enactment. It was designed to take away from a vessel the right to proceed at all, after hearing the first [1189] signal without first stopping the engines to enable those in charge to ascertain the position of the signalling vessel. It recognizes the difficulty of ascertaining from the sound of a whistle the exact position, and especially the course and distance of a vessel in a fog. It therefore does not leave the nagigation of a vessel, when a whistle is heard apparently forward of her beam, the position of which is not ascertained, to the master's judgment, but assumes

that the zone of danger of collision is reached when the whistle is heard, and forbids the ship to enter such zone except after stopping its engines to ascertain the position of the on-coming ship. It defines in positive terms the master's duty in such cases. (The El Monte, 114 Fed. 796; The Rondane, 9 A. S. P. M. C. 108; The Brittania, 10 A. S. P. M. C. 67; The St. Louis, 98 Fed. 750; The Admiral Schley, 142 Fed. 64.) It is said, however, that the first whistle heard by the master of the "Selja" sounded a long way off and the apparent distance thereof, as heard by him, showed absolutely no danger of collision prior to 3:10, and therefore the location of the "Beaver" was ascertained within the meaning of Rule 16. The same argument was urged in some of the causes above referred to but without effect. As said in "The Brittania": "It is not true that because a whistle sounds distant those on the ship hearing it are entitled to treat it as distant. Many cases in this court have shown that an approaching distant sounding whistle is really close. Again, it is not correct to say that a whistle having been heard can be located so as to ascertain it is at a precise bearing on If this Court were to hold that upon hearing a whistle which sounded to be distant, a vessel [1190] was justified in not stopping, although its position was not ascertained except that it sounded a long way off, every case in this court would be that the whistle sounded such a long way off that the ship was justified in not stopping." Captain Lie of the "Selja" admits that the whistle was nearer than he thought, and the evidence shows

that he was mistaken as to the course and distance of the oncoming vessel. His mistake illustrates the necessity and reason for Rule 16. If, after hearing the whistle he chose to take chances when the law directed him to make sure, his vessel is not exempt from liability on the ground of his unintentional error.

It is also claimed that even if the "Selja" was at fault in not obeying Rule 16, such fault was not a contributing cause to the collision. The law is that where a vessel has committed a positive breach of a statutory duty, she must show not only that probably her fault did not contribute to the disaster, but that it could not have done so. (The Pennsylvania, 19 Wall. 125-136; The Ellis, 152 Fed. 981; The Davidson vs. American S. B. Co., 120 Fed. 250; The Dauntless, 121 Fed. 420; The Admiral Schley, 142 Fed. 64; Hawgood Tr. Co. v. Mesaba S. S. Co., 166 Fed. 697.) The "Selja" has not sustained this burden. Indeed, it is quite apparent that if she had observed the rule she would not have reached the point of collision at the time she did and the "Beaver" would have passed her. Nor is there room here for the application of the so-called major and minor fault doctrine. Both vessels were equally at fault. The "Beaver" violated the first part of Rule 16 by going at an immoderate rate of speed, and the "Selja" was at fault for failing to observe the latter clause of the rule. One was as great a breach of [1191] duty as the other. The "Beaver" ran into a dense fog a short time before the collision and should, of course, have slackened her speed. She did not hear the "Selja's" whistle until about 3:13 and upon hearing it immediately reversed her engines full speed astern, but it was then too late to avoid the collision. The "Selja" was in the fog at 3:00 P. M. and had been for some time prior. She heard the "Beaver" whistle at 3:00 o'clock and continuously from that time until the collision, and yet she did not slacken her speed for five minutes after hearing the first whistle nor stop her engines until ten minutes thereafter. She apparently acted on the theory that it was not necessary to stop her engines until the repeated whistle of the on-coming steamer had unmistakably shown her that danger of collision was imminent if not unavoidable.

The Court cannot say, under these circumstances, that the fault of the "Beaver" was so grievous that the fault of the "Selja" should not be taken into account. The importance of enforcing the law as embodied in Rule 16 compels me to adjudge both vessels at fault.

Findings and judgment may be prepared accordingly for the signature of either the presiding Judge of the court or myself, as counsel may prefer.

R. S. BEAN,

Judge.

Dated the 24th day of June, 1912.

[Endorsed]: Filed June 26, 1912. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk. [1192] In the District Court of the United States in and for the Northern District of California.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of Himself and the Owners, Officers and Crew of Said Steamship, Libelant,

VS.

The American Steamship "BEAVER," Her Engines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

CONSOLIDATED FOR TRIAL.

No. 15,099.

AND

OLAF LIE, Master of the Norwegian Steamship "SELJA," etc.,

Libelant,

VS.

The American Steamship "BEAVER," Her Engines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

No. 15,130.

AND

PORTLAND & ASIATIC STEAMSHIP COM-PANY, a Corporation,

Libelant,

VS.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Respondent.

Interlocutory Decree. [1193]

The above causes having been consolidated for trial and thereafter having come duly and regularly on to be heard before the Court, and evidence having been adduced and the causes submitted, and thereafter, to wit, on the 26th day of June, 1912, an opinion having been rendered and filed holding both of the vessels involved herein in fault for the collision forming the subject matter of the above suits; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

- 1. That the collision mentioned in the pleadings herein was due to the fault on the part of both the steamship "Beaver" and the steamship "Selja," and that damages be awarded accordingly.
- 2. That libelant, Olaf Lie, in the original libel in case No. 15,099, do have and recover from the steamship "Beaver," on behalf of the officers and crew of the "Selja," not including himself, the full damages suffered by said officers and crew for the

San Francisco & Portland Steamship Co. 1401 causes in his libel mentioned, subject to no offset of any kind.

- 3. That the right of the libelant, Olaf Lie, in the original libel in case No. 15,099, to have and recover on behalf of his wife and children the damages suffered by them for loss of personal effects, be left for adjudication till the final decree herein, since further evidence bearing on this right may be adduced before the commissioner.
- 4. That the libelant, Olaf Lie, in the libel in intervention in case No. 15,099, do have and recover from the steamship "Beaver," on behalf of the owners and underwriters of the cargo of the steamship "Selja," the full damages suffered by them for the causes in said libel mentioned, subject to no offset of any kind. [1194]
- 5. That the right of the Portland & Asiatic Steamship Company, libelant in case No. 15,130, to recover the damages suffered by it for the causes in its libel and the amendments thereto therein mentioned, be left for adjudication till the final decree herein, since further evidence bearing on this right may be adduced before the commissioner.
- 6. That as regards the damages suffered by the owners of the steamship "Selja," and by the libelant, Olaf Lie, individually from the causes in the original libel in case No. 15,099 mentioned, and the damages suffered by the steamship "Beaver" from the causes in its answer to said libel mentioned, it is ordered that both vessels being in fault, such damages be apportioned under the usual rule of cross-liabili-

ties, and that, if any balance be found due from the steamship "Beaver" to said libelant, Olaf Lie, individually and also on behalf of the owners of said steamship "Selja," there be deducted therefrom one-half of all damages awarded under clauses 2, 3, 4 and 5 of this decree, and that, if no balance be then due, no damages be recovered by said libelant for himself individually or for the owners of said steamship "Selja," but that, if any balance be found due, said libelant have and recover said balance from said steamship "Beaver" for himself and the owners of said "Selja" in proportion to the respective amounts of their claims.

- 7. That the costs to date be divided between the libelant, Olaf Lie, in the original libel in case No. 15,099, and the San Francisco & Portland Steamship Company, claimant in case No. 15,099, and respondent in case No. 15,130.
- 8. That the above causes be and the same hereby are referred to James P. Brown, United States Commissioner for the Northern District of California, to ascertain and compute the damages sustained by the respective libelants herein, and those [1195] represented by them, and by the steamship "Beaver" by reason of said collision, and to apportion the same in accordance with the provisions of this decree, and to report said damages and apportionment together with all the evidence produced before him on this reference to the above-named court.

San Francisco & Portland Steamship Co. 1403 Dated at San Francisco, California, this 31st day of August, 1912.

R. S. BEAN,

District Judge of the Northern District of California by Assignment.

Approved as to form.

McCLANAHAN & DERBY,

Proctors for Libelant in Original Libel in Case #15,099, and for Libelant in Case #15,130.

LOUIS T. HENGSTLER,

Proctor for Olaf Lie as Intervening Libelant in Case #15,099.

PAGE, McCUTCHEN, KNIGHT & OLNEY,

Proctors for Claimant in Case #15,099 and for Respondent in Case #15,130.

[Endorsed]: Filed Sept. 2, 1912. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk. [1196]

- [Stipulation as to Parties Interested in the Cargo of "Selja," and Amounts of Damages Suffered, etc.]
- In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of the Owners and Underwriters of Her Cargo,

Intervening Libelant,

The American Steamship "BEAVER," Her Engines, Boilers, Tackle, Apparel, Furniture, Boats and Appurtenances,

Libelee.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties to the original suit herein No. 15.099, and the parties to the aboveentitled suit in intervention, No. 15,099, and the parties to the suit of Portland and Asiatic Steamship Company vs. San Francisco & Portland Steamship Company, No. 15,130, that the parties interested in the cargo of the Norwegian Steamship "Selia." and referred to in said libel of intervention, and on whose behalf Olaf Lie, as bailee, filed the said libel of intervention, are the owners and underwriters hereinafter mentioned, and that the respective amounts of damages suffered by each of said owners or underwriters of cargo, on said 22d day of November, 1910, are the sums hereinafter respectively set opposite the name of each owner or underwriter in figures, to wit: [1197]

Name of Owner or Underwriter. Allianz Ins. Co. of Berlin	Amount of Damage \$ 7610.91
Atlantic Mutual Ins. Co	3704.81
British Dominion Marine Ins. Co	5093.31
British & Foreign Marine Ins. Co	14768.02
Canton Ins. Office	999.87
Commercial Union Assurance Co	4294.86
Chubb & Son	21772.89
Dale & Co., Ltd	323.32
Fireman's Fund Ins. Co	7669.83

San Francisco a Fortiana Steamontp		
Name of Owner or Underwriter. Amount		
Hellmann Bros. & Co	184.36	
Higgins & Cox		
	11438.13	
Iwakami & Co	9663.85	
Insurance Co. of North America	2028.00	
Kobe Mar. Transp. & Fire Ins. Co	1272.15	
Lloyds London	2656.91	
Lloyds United States	1081.69	
London Assurance Corporation	425.55	
London-Provincial Mar. & Gen. Ins. Co	1477.11	
Mannheim Ins. Co	9389.65	
New Zealand Ins. Co	2064.81	
North China Ins. Co	14498.36	
Ocean Marine Ins. Co	604.92	
Samuel Bird, Jr. & Co	2428.00	
South British Ins. Co	114.98	
Standard Mar. Ins. Co	1269.59	
St. Paul Fire & Mar. Ins. Co	257.56	
Thames & Mersey	12178.72	
Switzerland Marine Ins. Co	9415.89	
Tokio Marine Ins Co	42710.85	
Union Marine Ins. Co. of Liverpool	1582.38	
[1198]		
Union Ins. Co. of Canton	15488.90	
Western Assurance Co. of Toronto	3193.64	
	12333.83	
Yokohama Ins. Co	10278.09	
AND IT IS FURTHER STIPULATED		
sum of all the said damages suffered by the parties		
in said libel of intervention mentioned, and o	^	
behalf said libelant Olaf Lie, as bailee, filed		

libel of intervention, is the sum of Two Hundred and Sixty Thousand Three Hundred and Forty-four and 41/100 Dollars (\$260,344.41).

PROVIDED, However, and upon the distinct understanding and agreement that, in the event of the institution of subsequent proceedings for limitation of liability, it shall be open to any of the parties hereto to allege and prove (if it be a fact, and if that fact be legally relevant and material) that a settlement was made by the owners or underwriters of the steamship "Beaver," or on their behalf, with the aforesaid owners or underwriters of the cargo of the steamship "Selja" or persons representing them by subrogation or otherwise for lesser sums than those herein mentioned, and no decree made or entered herein shall be deemed res adjudicata in such subsequent proceedings for limitation of liability on the question as to whether such settlement was made, and as to whether the amount to which liability is to be limited is or is not to be thereby reduced; it being further understood that this stipulation is made without admission, by any of the parties hereto, that either of the questions above mentioned, to wit: "as to whether such alleged settlement was made, or as to whether the amount to which liability is to be limited is or is not to be thereby reduced," is legally either relevant or material or competent; [1199]

PROVIDED, FURTHER, however, that this stipulation shall be conclusive in such limitation proceedings as to the actual value of the cargo lost in the collision herein.

Dated: San Francisco, Cal., May 20, 1913.

McCLANAHAN & DERBY,

Proctors for Libelant in Original Libel No. 15,099.

McCUTCHEN, OLNEY & WILLARD,

WILLIAM DENMAN,

Proctors for Claimant in Original Libel No. 15,099. LOUIS T. HENGSTLER,

Proctors for Libelant in Libel of Intervention No. 15,099.

McCUTCHEN, OLNEY & WILLARD, WILLIAM DENMAN,

Proctors for Claimant in Libel of Interventon No. 15,099.

McCLANAHAN & DERBY, Proctors for Libelant in Libel No. 15,130. McCUTCHEN, OLNEY & WILLARD, WILLIAM DENMAN,

Proctors for Respondent in Libel No. 15,130.

[Endorsed]: Filed May 31, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1200]

In the District Court of the United States, in and for the Northern District of California, First Division.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of Himself and the Owners, Officers and Crew of Said Steamship,

Libelant,

VS.

The American Steamship "BEAVER," Her Engines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

CONSOLIDATED FOR TRIAL. No. 15.099.

AND

OLAF LIE, Master of the Norwegian Steamship "SELJA," etc.,

Libelant,

VS.

The American Steamship "BEAVER," Her Engines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

No. 15,130. AND

PORTLAND & ASIATIC STEAMSHIP COM-PANY, a Corporation,

Libelant,

VS.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Respondent.

Stipulation as to Damages and Facts.

IT IS HEREBY STIPULATED AND AGREED by and between the [1201] parties hereto that the following damages are admitted to have been suffered by the parties represented by Olaf Lie, master of the steamship "Selja," in his original libel herein in Case No. 15,099, by the Portland & Asiatic Steamship Co., libelant in Case No. 15,130, and by the claimant in Case No. 15,099:

1. By the officers and crew of the steamship "Selja" referred to in clause 2 of the Interlocutory Decree herein:

Alfred Halvorsen, 1st officer	3643.50
Alfred Larsen, 2d officer	372.00
Arvid Bjorn, 3d officer	249.90
Rambek Eggen, chief engineer	458.28
Axel Andersen, 2d engineer	349.30
Pedar Hansen, 3d engineer	292.50
Wong Hai, steward	791.10
Choi Hoy, carpenter	284.75

2. By Olaf Lie, master of the steamship "Selja," \$1,973.23.

h.

- 3. By Wilhelm Jebsen, owner of the steamship "Selja" as follows:
- a. Value of the steamship "Selia." exclusive of the items hereinafter enumerated \$171,000.00 Spare gear of said "Selja"..... 3,056.00 b. Engine-room stores of said "Selia" 951.51 C. Deck-room stores 950.63 d. Provisions for Chinese crew of said e. "Selja" 261.45 f. Cost of keeping Chinese crew in San Francisco pending their return to China 160.63 Cost of returning said Chinese crew g. to China 1,771.20

As to items "f," "g" and "h" claimant simply admits that such damages were suffered, but not that they are recoverable.

43.00

Cost of Maritime Declaration made

by the master of the "Selja".....

It is also stipulated that the cost of operating and maintaining the "Selja" under the charter-party hereinafter referred [1202] to amounted to the sum of two thousand, six hundred and eighty (2,680) dollars per month, and that her charter hire amounted to the sum of five thousand, three hundred forty-six (5,346) dollars per month, and that it would have taken her eight days to have completed the voyage which she was then pursuing and to have discharged her cargo.

4. By the Portland & Asiatic Steamship Company, charterer of the steamship "Selja," libelant

in Case No. 15,130. The amount of the damages suffered by this libelant are not admitted but the following facts are to be taken as true:

- a. That the charter under which said "Selja" was proceeding was in the form of the instrument hereunto annexed marked Exhibit "A."
- b. That at the time of the collision herein said libelant had paid the semi-monthly charter hire of said vessel from November 16, 1910, to December 1, 1910, amounting to two thousand five hundred ninety-six and 2/100 (2,596.02) dollars, of which there was later returned to libelant the sum of one thousand five hundred seventeen and 36/100 (1,517.36) dollars, being the charter hire from November 22, 1910, to December 1, 1910.
- c. That it would have taken the "Selja" four days from said November 22, 1910, to have arrived at San Francisco and to have discharged the 3365 tons of cargo destined for that port, and four more days to have arrived at Portland and to have discharged the 693 tons of cargo destined for that port.

 [1203]
- d. That coal would have been consumed in the following amounts and at the following prices to complete the voyage:

arrived in Portland...... 111.8 tons 660 miles

, , , , , , , , , , , , , , , , , , , ,
Would have consumed during
one day in Portland 5. tons
140.8 tons at \$2.565 equals \$360.75
e. That the following additional charges would
have been incurred before delivery of the cargo:
Cost of discharging 3365 tons
at San Francisco, at 25ϕ \$841.25
Cost of discharging 693 tons at
Portland, at \$.435 301.45 \$1142.70
Port charges pilotage San
Francisco \$118.66
Port charges pilotage Port-
land 115.00
Dockage at San Francisco 115.80
Tonnage dues at San Fran-
cisco

\$1760.40

- f. That the total collectible freight on the cargo was fourteen thousand, eighty-eight and 36/100 (14,088.36) dollars, and the total prepaid frieght was five thousand two hundred eighty-nine and 70/100 (5289.70) dollars.
- g. That the prepaid freight was on 1036½ tons to San Francisco and 77 tons to Portland.
- h. That the cost of discharging the collectible [1204] freight alone as distinguished from the prepaid freight would be as follows:

Cost of discharging 23291/2 tons

at San Francisco, at \$.25.... \$582.38

Cost of discharging 616 tons at

Portland, at \$.435...... 267.96 \$850.34

- i. That the value of the bunker coal owned by libelant and lost in the collision was \$3,011.05, and of the other articles also lost, as enumerated in the amendment to the libel, was \$208.00.
- 5. That the damages suffered by reason of the collision herein by the owners of the steamship "Beaver" and subject to be offset as provided in clause 6 of the Interlocutory Decree herein, amount to the sum of thirty-one thousand eight hundred twenty-nine and 18/100 (31,829.18) dollars, made up of the following items:

N = 22d to Dec 7th 1910	\$5,713.66
Demurrage, Nov. 22d to Dec. 7th, 1910	15,017.64
Repairs	
Cleaning and painting	. 329.75
Paint,	391.25
Paint,	4,785.00
Drydockage	170.00
Time-keepers	110.00
Surveys:	
Gardener	212.00
American Bureau of Shipping	105.00
American Dureau of Smpp-8	10.00
Launch Hire	170.00
Towage—S. F. & P. S. S. Co	
S. & M. T. B. Co	100.00
Dockage	70.10
Discharging cargo	831.15
Discharging cargo	1,116.40
Loading cargo	396.20
Engine-room stores used during repairs.	
Wages and provisions during repairs	1,340.63
Wages and provisions for one day	
wages and provisions	

(would have been expended if cargo	
had not been forwarded)	172.00
General average expenses	898.40
-	

Total, \$31,829.18

[1205]

- 6. All of the foregoing damages of all of said parties are exclusive of interest and interest may be claimed on said damages by all parties.
- 7. It is further stipulated and agreed that none of the aforesaid statements of damage is exclusive, and that other damages may be claimed by any of the parties hereto (if warranted by the pleadings) on the evidence adduced herein, or the facts hereby agreed upon, the purpose of this stipulation being to agree on such damages and such facts as can now be agreed upon without the necessity of making proof of the same.
- 8. All statements as to damages herein made shall be conclusive in any subsequent proceedings for limitation of liability, but it is not admitted that the claimant in Case No. 15,099 would be entitled to deduct all its aforesaid damages in such limitation proceedings.

Dated: July 18, 1913.

McCLANAHAN & DERBY,

Proctors for Original Libelant in Case No. 15,099, and Libelant in Case No. 15,130.

WILLIAM DENMAN, DENMAN and ARNOLD,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant in Case No. 15,099, and for Respondent in Case No. 15,130.

San Francisco & Portland Steamship Co. 1415

ANDROS & HENGSTLER, LOUIS T. HENGSTLER,

Proctors for Intervening Libelant, in Case No. 15,099. [1206]

Exhibit "A" [to Stipulation as to Damages and Facts—Time Charter-party].

GEO. HELLIESEN,
Ship & Steamship Broker,
Maritime Building,
8 and 10 Bridge St.,
New York.

TIME CHARTER-PARTY.

THIS CHARTER PARTY, made and concluded upon in the City of New York, the first day of February, 1909, between Messrs. Kjaer & Isdahl, as agents for owners of the good Steel Screw Steamship "SELJA" of Bergen of 4459 tons gross register, and 2789 tons net register having engines of 360 nominal horse-power, provided with proper certificate for hull and machinery, and classed 100 A. 1. at British Lloyds and The Portland & Asiatic Steamship Co., Charterers of the City of Portland, Oregon,

WITNESSETH, that the said owners agree to let and the said charterers agree to hire the said steamship from the time of delivery, for a period of about three (3) years. Steamer to be placed at the disposal of the charterers, at Hong Kong, China in such dock or at such wharf or place (where she may always safely lie afloat, at all times of the tide), as the Charterers may direct, and being, on her delivery ready to receive cargo, and tight, staunch, strong and in every way fitted for the service, including dunnage as may be on board, having water ballast, steam winches and donkey boiler, (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), and to be so maintained during the continuation of this Charter-party; to be employed in carrying lawful merchandise, livestock under and/or on deck including petroleum or its products, in cases, and passengers so far as accommodations will allow in such lawful trades, between safe port and/or ports in British North America and/or United States of America, and/or West Indies, and/or Central America, and/or Carribean Sea, and/or Gulf of Mexico, and/or South America, and/or Europe, and/or Africa, and/or Asia, and/or Australia, excluding River St. Lawrence from October 1st, to May 1st, (White Sea, Black Sea and the Baltic out of season), Magdalena River, and all unsafe ports: and excluding Alaska altogether, as the Charterers or their Agents shall direct, on the following conditions:

- 1. That the owners shall provide and pay for all provisions, wages and Consular shipping and discharging fees of the Captain, Officers, Engineers, Firemen and Crew, and all other Norwegian fees and consular charges of every description, shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, and maintain her in a thoroughly efficient state, in hull and machinery for and during the service. [1207]
- 2. That the Charterers shall provide and pay for all the Coals, Fuel, Port Charges, Pilotages, Agen-

San Francisco & Portland Steamship Co. 1417

cies, Commissions, Consular Charges (except those above stated) and all other charges whatsoever except those before stated.

- 3. That the Charterers shall accept and pay at once on delivery of Steamer for all Coal in the Steamer's Bunkers on delivery, and the Owners shall, on expiration of this Charter-party, pay for all Coal left in the Bunkers, each at the current market prices at the respective Ports where she is delivered to them.
- 4. That the Charterers shall pay for the use and hire of said Vessel £1100—say Eleven Hundred Pounds British Sterling, per Calendar Month, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a month; hire to continue until her delivery, with clean holds to the owners (unless lost) at a United States Pacific port or British North American port in the Pacific or at a port in China or Japan, port at charterer's option.
- 5. That should the steamer be on her voyage towards port of return delivery at the time a payment of hire becomes due, said payment shall be made for such a length of time, as the Owners or their Agents and Charterers, or their Agents may agree upon as the estimated time necessary to complete the voyage, and when the Steamer is delivered to the Owners' agents any difference shall be refunded by steamer or paid by Charterers, as the case may require.
- 6. Payment of said hire to be made in cash semimonthly in advance in New York at the current rate

of exchange for approved bankers demand bills on London in U. S. Gold or its equivalent, and in default of such payment or payments as herein specified, the Owners shall have the faculty of withdrawing the said steamer from the service of the Charterers, without prejudice to any claim, they, the Owners, may otherwise have on the Charterers, in pursuance of this Charter.

- 7. Any expense to suit U. S. Passenger Inspection to be borne by Charterers. Charterers to pay for victualling passengers at the rate of 5/Br. Sterling per day for first-class passengers, 2/6 for second class passengers and 1/3 for laborers or steerage passengers.
- 8. The cargo or cargoes to be laden and/or discharged in any dock, or at any wharf or place that the Charterers or their agents may direct, provided the steamer can always safely lie afloat at any time of tide.
- 9. That the whole reach of the vessel's holds, deck and usual places of loading, and accommodation of the ship (not more than she can reasonable stow or carry) shall be at the Charterer's disposal, reserving only proper and sufficient space for ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel. [1208]
- 10. That the Captain shall prosecute his voyages with the utmost dispatch, and shall render all customary assistance with ship's crew, tackle, and boats. That the Captain and officers (although appointed by the Owners) shall be solely under the jurisdiction and orders and direction of the Charterers as re-

gards employment, agency or other arrangements, and they must faithfully carry out all orders of the Charterers in regard to the handling of cargo as though they received these instructions from the Owners; and the Charterers hereby agree to indemnify the Owners from all consequences or liabilities that may arise from the Captain signing Bills of Lading, or otherwise complying with the same.

- 11. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and if necessary, make a change in the appointments.
- 12. That the Charterers shall have permission to appoint a super-cargo who shall accompany the steamer and see that voyages are prosecuted with the utmost dispatch. He is to be furnished, free of charge, with first-class accommodations, and same fare as provided for Captain's table.
- 13. That the master shall be furnished, from time to time, with all requisite instructions and sailing directions, and shall keep a full and correct Log of the voyage or voyages which are to be patent to Charterers or their agents, and to furnish the Charterers, their Agent or super-cargo, when required, a true daily copy of Log, showing the course of the steamer and distance run, and the consumption of Coal and to take every advantage of Wind by using the Sails with a view to economize the expenditure of Coal.
- 14. That the Master shall use all diligence in caring for the ventilation of the cargo.

- 15. That in the event of the loss of time from deficiency of men or stores, breakdown of machinery, stranding, fire or damage preventing the working of the vessel for more than twenty-four running hours, the payment of the hire shall cease until she be again in an efficient state to resume her service; but should she in consequence put in to any port, other than that to which she is bound, the Port Charges and Pilotages at such Port shall be bourne by the Steamer's Owners, but should the vessel be driven into Port, or to anchorage by stress of weather, or from any accident to the cargo, such detention or loss of time shall be at the Charterers' risk and expense.
- 16. That should the vessel be lost, freight paid in advance not earned (reckoning from the date of her last being heard of) shall be returned to the Charterers.
- 17. The act of God, enemies, fire, restraint of princes, rulers and people and all dangers and accidents of the seas, rivers, machinery, boilers, and steam navigation, and errors of navigation, throughout this Charter Party, always mutually excepted. [1209]
- 18. That should any dispute arise between the Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision, or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of Court.
 - 19. That the Owners shall have a lien upon all

cargoes, and all sub-freights, for any amounts due under this Charter, and the Charterers to have a lien on the Ship, for all moneys paid in advance and not earned.

- 21. That as the steamer may be from time to time employed in tropical waters during the term of this Charter, steamer is to be docked, bottom cleaned and painted whenever Charterers and Master think necessary, but at least once in every six months, and payment of the hire to be suspended until she is again in proper state of service.
- 22. That the Owners are to provide ropes, falls, slings and blocks, necessary to handle ordinary cargo up to three tons (of 2240 lbs. each) in weight, also lanterns for night work.
- 23. Steamer to work night and day if required by Charterers, and all steam winches to be at Charterers' disposal during loading and discharging, and steamer to provide men to work same both day and night as required, Charterers agreeing to pay extra expense if any incurred by reason of night work, at the current local rate.
- 24. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit. General average, if any, to be according to York-Antwerp Rules 1890.
- 25. That the Charterers shall have the liberty of subletting the steamer, if required by them, but Charterers remaining responsible.
- 26. That if required by Charterers, time not to commence before May first next, and should steamer

not be ready for delivery at port of delivery on or before May 31st, 1909, Charterers or their Agents to have the option of cancelling this Charter, at any time not later than the day of steamer's readiness.

- 27. It is also mutually agreed, that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels, etc."
- 28. A freight brokerage of $2\frac{1}{2}$ per cent. is due to charterers and a commission of $2\frac{1}{2}$ per cent on the estimated amount of Freight is due and payable by Owners, on *signment* [1210] hereof to GEO. HELLIESEN and KJAER & ISDAHL for division between them. Ship lost or not lost, as also on any extension or renewal of this Charter or purchase of vessel.
- 29. Penalty for non-performance of this Contract, estimated amount of damages.
- 30. In case Asiatic crews are employed for account of the Owners, then all additional charges which may result through carrying such crews must be met by the owners, both in the United States and in the Orient or elsewhere.

By cable authority from Messrs. Kjaer & Isdahl, dated at Bergen, February 1st, 1909.

(Sgd.) G. HELLIESEN,

Agent.

(Sgd.) R. P. SCHWERIN,

Vice-Pres. & Gen. Mgr. Portland & Asiatic Steamship Co. San Francisco & Portland Steamship Co. 1423

I HERBY CERTIFY the above to be a true copy of the original Charter-party in my possession.

(Sgd.) GEO. HELLIESEN, (Sgd.) (Illegible.)

Charterers to pay owners £250.—say Two Hundred and Fifty Pounds British Sterling extra for every voyage to Nicolaievsk or north of Nicolaievsk.

[Endorsed]: Filed Aug. 29, 1913. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [1211]

Stipulation [for Submission of Undetermined Questions, etc.]

In the District Court of the United States in and for the Northern District of California, First Division.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of Himself and the Owners, Officers and Crew of Said Steamship, Libelant,

VS.

The American Steamship "BEAVER," Her Engines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

CONSOLIDATED FOR TRIAL. No. 15.099.

AND

OLAF LIE, Master of the Norwegian Steamship "SELJA," etc.,

Libelant,

VS.

The American Steamship "BEAVER," Her Engines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

No. 15,130. AND

PORTLAND & ASIATIC STEAMSHIP COM-PANY, a Corporation,

Libelant.

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Respondent.

Stipulation.

WHEREAS, all questions heretofore arising in the above causes have been heard and determined by Honorable Robert S. Bean, Judge of the United States District Court for the District of Oregon, acting by assignment as Judge for the United States [1212] District Court for the Northern District of California; and WHEREAS, the interlocutory decree in said causes signed by said Honorable Robert S. Bean provided for a reference to a Commissioner to ascertain and report on the damages sustained by the various parties herein; and

WHEREAS, since the entry of said interlocutory decree the parties hereto have stipulated on the amount of damages suffered or on all facts from which the amount of such damages can be determined, and only questions of law remain for determination, thus rendering any reference unnecessary; and

WHEREAS, it is the desire of all the parties hereto that the questions remaining for decision herein should be determined by said Judge Bean, and that he should sign the final decrees in the above causes and said Judge Bean has consented so to do; now therefore,

IT IS HEREBY STIPULATED AND AGREED by and between the parties that no reference of the above causes be had and that the same may be submitted to said Judge Bean for decision of all questions remaining to be determined in said causes, and that said Judge Bean may make and render the final decrees in said causes; and

IT IS FURTHER STIPULATED AND AGREED by and between the parties that said causes be submitted to said Judge Bean on briefs, the respective libelants to transmit their respective briefs to said Judge Bean within ten days from the filing of this stipulation; the respective claimants and respondents to transmit their briefs within ten

days after service on them of said briefs of the libelants, and said libelants to have five days thereafter to reply to said briefs last named.

Dated: September 11, 1913.

McCLANAHAN & DERBY,

Proctors for Original Libelant in Case No. 15,099, and Libelant in Case No. 15,130. [1213]

McCUTCHEN, OLNEY & WILLARD,

WM. DENMAN,

Proctors for Claimant in Case No. 15,099, and for Respondent in Case No. 15,130.

ANDROS & HENGSTLER,

Proctors for Intervening Libelant in Case No. 15,099.

Order [Approving Stipulation for Submission of Undetermined Questions].

The foregoing stipulation is hereby proved, and it is ordered that the above causes be submitted in accordance therewith.

Dated: September 11, 1913.

M. T. DOOLING,

Judge of the United States District Court for the Northern District of California.

Order [Designating U. S. District Judge].

Honorable Robert S. Bean, United States District Judge for the Northern District of Oregon, is hereby designated as Judge of the United States District Court for the Northern District of California for the purpose of deciding the above causes in accordance San Francisco & Portland Steamship Co. 1427 with the above stipulation and making the final decrees therein.

Dated: September 20, 1913.

WM. W. MORROW, Circuit Judge.

[Endorsed]: Filed Sep. 22, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1214]

In the District Court of the United States, in and for the Northern District of California, First Division.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of Himself and the Owners, Officers and Crew of Said Steamship,

Libelant.

VS.

The American Steamship "BEAVER," Her Engines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

CONSOLIDATED FOR TRIAL. No. 15,099.

AND

OLAF LIE, Master of the Norwegian Steamship "SELJA," etc.,

Libelant,

VS.

The American Steamship "BEAVER," Her Engines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

No. 15,130.

AND

PORTLAND & ASIATIC STEAMSHIP COM-PANY, a Corporation,

Libelant.

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Respondent.

Memorandum Opinion on Final Hearing.

MEMORANDUM BY BEAN, District Judge, on Final Hearing.

By the interlocutory decree it is adjudged that both the "Beaver" and the "Selja" were in fault and that damages [1215] should be awarded accordingly; that the "Selja's" cargo owners and her officers and crew, except her master, are entitled to their

damages in full, subject to no offset whatever; that the damages of the owner of the "Selja" and her master and that of the "Beaver" should be apportioned under the usual rule of cross-liabilities and subject to the offsets specified in clause 6 of the interlocutory decree; that the rights of the Portland & Asiatic Steamship Company, the charterer of the "Selja" and libelant in case No. 15,130, to recover damages be left for adjudication until the final de-The cause was thereupon referred to a commissioner to ascertain and compute the damages sustained by the respective parties. Thereafter stipulations were entered into fixing the amount of damages or settling the facts from which in conjunction with the record, such damages can be computed as a matter of law, and the cause has been by agreement of parties submitted on such stipulations and briefs for final decision without reference to a commissioner.

From the stipulations of facts and admissions made in the briefs filed I find the damages suffered by the respective parties to be as follows:

by the respective parties to be as follows:					
1.	Cargo owners\$260,344.41				
2.	Officers and crew of "Selja":				
	Alfred Halvorsen, 1st officer. \$643.50				
	Alfred Larsen, 2d officer 372.00				
	Arvid Bjorn, 3d officer249.90				
	Rambek Eggen, chief engi-				
	neer 458.28				
	Axel Andersen, 2d engineer. 349.30				
	Pedar Hansen, 3d engineer 292.50				
	Wong Hai steward 791 10				

149	Otal Lie vs.			
	Choi Hoy, carpenter 284.75			
3.	Damages of Olaf Lie, Master of the			
	"Selja"\$1,973.23			
[12	16]			
4.	Damages of Wilhelm Jebsen, owner			
	of the "Selja":			
	Value of the "Selja" exclusive of the			
	items hereinafter mentioned\$171,000.00			
	Spare gear of the "Selja" 3,056.00			
	Engine-room stores of "Selja" 951.51			
	Deck-room stores of "Selja" 950.63			
	Provisions for Chinese crew of			
	"Selja" 261.45			
	Cost of keeping Chinese crew in San			
	Francisco, pending their return to			
	China			
	Cost of returning Chinese crew to			
	China 1,771.20			
	Cost of Maritime Declaration made			
	by the master of the "Selja" 43.00			
5.	Damages to the "Beaver" 31,829.18			
6.	Damages of the Portland & Asiatic			
	Steamship Company, Charterer of			
	the "Selja":			
	For loss of pending freight\$10,742.21			
	Bunker coal, flour slings, etc 3,209.05			
I	t is admitted that these several amounts should			
bea	r interest at 6 per cent per annum from Novem-			
ber 21, 1910, the date of the collision, to the final de-				

It is admitted that these several amounts should bear interest at 6 per cent per annum from November 21, 1910, the date of the collision, to the final decree, and that the cargo owners and the officers and crew of the "Selja," other than the master, are entitled to a judgment against the "Beaver" for their San Francisco & Portland Steamship Co. 1431

full damages without offset; that the damages of the owner and master of the "Selja" and of the "Beaver" be apportioned and subject to the offsets as provided in clause 6 of the interlocutory decree.

The only controverted question is whether the Portland & Asiatic Steamship Company, charterer of the "Selja," is entitled to recover in full for the loss of bill of lading freight, bunker coal, etc., or whether it stands in the same relation to the ship as the owner, and its damages should be awarded accordingly.

For the libelant it is contended that since the [1217] charter was a time charter and not a demise of the vessel, the charterer is to be regarded and treated as an innocent party to the cause of the collision and entitled to the same remedies as the cargo owners or the crew. While the position of the San Francisco & Portland Steamship Company, the claimant of the "Beaver," is that the "Selja" was the agency or instrumentality of the charterer in earning the bill of lading freight, and that her negligence affected its right to such freights, the same as it does the owner's right to the charter hire.

The question seems to be one of first impression as no authorities directly in point have been cited on either side. In my judgment the weight of the argument is with the libelant. The charterer was a mere contract of affreightment, the vessel remaining in the possession, control and command of the owner so far as her navigation was concerned. Her master and crew were the agents of the owner and not of the charterer. The charterer had no control over

her navigation, and was in no way responsible for the negligence which caused the damages. It seems to me, therefore, that it stands in the same position and entitled to the same rights as the innocent cargo owners. I conclude that the libelant in case No. 15,130 should recover of the "Beaver" damages in full without any offset whatever.

COSTS.

It is provided in the interlocutory decree that the original libelant in case No. 15,099 and the claimant therein should divide the costs incurred up to that time, and as to these parties the same provision will be made in the final decree. I take it, however, that the provision as to costs relates to the parties named and not to the rights of [1218] the cargo owner and charterer of the "Selja," who are innocent parties and entitled to a judgment for their costs.

Decrees may be prepared accordingly.

Dated, November 22nd, 1913.

R. S. BEAN,

Judge.

[Endorsed]: Filed Nov. 25, 1913. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [1219]

In the District Court of the United States in and for the Northern District of California, First Division.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of Himself and the Owners, Officers and Crew of Said Steamship, Libelant,

VS.

The American Steamship "BEAVER," Her Engines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

Final Decree.

The above cause having come duly on to be heard on the pleadings and proofs of the respective parties, and the same having been argued and submitted, and the Court having rendered its opinion finding both the steamship "Beaver" and the steamship "Selja," in fault, and having made and entered its interlocutory decree so holding and also holding that damages should be awarded accordingly, and the damages suffered by the libelant and those represented by him and by the steamship "Beaver" having been thereafter ascertained, and the Court having on the 25th day of November, 1913, filed its opinion as regards said damages finding the specific damages suffered by each party interested

herein, to which opinion reference is hereby made, and it appearing from said opinion that the damages suffered by the libelant and those represented by him and by the steamship "Beaver" are as follows: [1220]

1.	Officers and crew of "Selja":	
	Alfred Halvorsen, 1st	
	officer	
	Alfred Larsen, 2d officer. 372.00	
	Arvid Bjorn, 3d officer 249.90	
	Rambek Eggen, chief	
	engineer 458.28	
	Axel Andersen, 2d en-	
	gineer 349.30	
	Pedar Hansen, 3d engineer 292.50	
	Wong Hai, steward 791.10	
	Choi Hoy, carpenter 284.75	
2.	Damages of Olaf Lie,	
	Master of the "Selja"	\$1,973.23
3.	Damages of Wilhelm Jebsen, owner	
	of the "Selja":	
	Value of the "Selja" exclusive	
	of the items hereinafter men-	
	tioned	
	Spare gear of the "Selja"	3,056.00
	Engine room stores of "Selja"	951.51
;	Deck room stores of "Selja"	950.63
	Provisions for Chinese crew of	
	"Selja"	261.45
	Cost of keeping Chinese crew in	
	San Francisco pending their	
	return to China	160.63

Cost of returning Chinese crew	
to China	1,771.20
Cost of Maritime Declaration	undigge ha
made by the master of the	
"Selja"	43.00
Net charter hire for 8 days	711.04
4. Damages to the "Beaver"	31,829,18
And that to all of said items interest at	the rate
of six per cent per annum should be added	:

And it further apearing that after apportioning the damages suffered by the owner of the steamship "Selja" and by the libelant, Olaf Lie, individually as required by Clause 6 of the interlocutory decree herein, and also making the deductions required under said Clause 6 of said interlocutory decree, there is no balance remaining to be paid to said owner of said "Selja" or said libelant, Olaf Lie, individually, and all and [1221] singular the premises having been duly considered; now, therefore.

IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That libelant recover no damages either for himself individually or for the owner of said steamship "Selja."

2. That libelant have and recover from the American Steamship "Beaver" and the above-named claimant on behalf of the following officers and crew of the "Selja" the following sums:

Name.	Principal.	Interest from Nov. 22, 1910.	Total.
	4 1	to Date.	
Alfred Halvorsen,			
officer	\$643.50 p	lus \$119.05=	=\$762.55
Alfred Larsen, 2d o	ffi-		
cer	372.00	" 68.82=	= 440.82
Arvid Bjorn, 3d o	ffi-		
cer	249.90	" 45.41=	294.90
Rambek Eggen, ch			
engineer	458.28	" 83.20=	541.48
Axel Andersen, 2d e			
gineer		" 64.59=	= 413.89
Pedar Hansen, 3d e			
gineer	292.50	" 53.13=	345.63
Wong Hai, steward		" 143.70=	934.80
Choi Hoy, carpenter	r 284.75	" 51.61=	= 336.36
. 7 . 7 . 7 . 1			

And that said steamship "Beaver" and the said claimant pay to libelant, on behalf of said abovenamed persons, the said total sums, together with interest thereon at the rate of six per cent per annum from the date of this decree until the same is satisfied.

- 3. That the costs herein be divided between libelant and claimant.
- 4. That a summary judgment be and the same is hereby entered for the amount of this decree against the sureties on the bond given herein for the release of the steamship "Beaver."

San Francisco & Portland Steamship Co. 1437 Dated: December 2d. 1913.

R. S. BEAN.

Judge (by Assignment) of the United States District Court for the Northern District of California. [1222]

O. K. as to form

McCUTCHEN, OLNEY & WILLARD.

[Endorsed]: Filed Dec. 5, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1223]

In the District Court of the United States in and for the Northern District of California, First Division.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of Himself and the Owners, Officers and Crew of Said Steamship, Libelant,

VS.

The American Steamship "BEAVER," Her Engines, etc.

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

Stipulation as to Costs.

The costs of libelant and claimant being approximately equal, it is hereby stipulated and agreed that said libelant and claimant each pay his and its own costs herein to date, notwithstanding the final

decree herein providing that said costs be divided; but this stipulation shall not prevent either of said parties from claiming said costs in the event of a reversal or modification of said decree on appeal.

Dated: December 6th, 1913.

McCLANAHAN & DERBY.

Proctors for Libelant.

WILLIAM DENMAN. McCUTCHEN, OLNEY & WILLARD, Proctors for Claimant.

[Endorsed]: Filed Dec. 9, 1913. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [1224]

In the District Court of the United States in and for the Northern District of California, First Division.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of Himself and the Owners, Officers and Crew of Said Steamship. Libelant.

VS.

The American Steamship "BEAVER," Her Engines, etc.

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

Notice of Appeal.

To Walter B. Maling, Clerk of the Above-entitled Court, San Francisco & Portland Steamship Company, Claimant Herein, and Messrs. William Denman and McCutchen, Olney & Willard, Proctors for Claimant:

Please take notice that the libelant herein on his own behalf and on behalf of Wilhelm Jebsen, owner of the Norwegian steamship "Selja" hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree of the District Court of the United States for the Northern District of California dated December 2d. 1913, and filed herein December 5th, 1913, adjudging that libelant recover no damages either for himself individually or for the owner of said steamship "Selia." and that the costs be divided between libelant and claimant. Libelant does not, however, appeal from that part of said decree awarding damages to the officers and crew of said steamship "Selja," but only desires to review [1225] the right of himself and the owner of said "Selja" to recover their damages and costs in the above cause.

Dated: December 8th, 1913.

McCLANAHAN & DERBY,

Proctors for Libelant.

Receipt of a copy of the within Notice of Appeal is hereby admitted this 8th day of December, 1913.

WILLIAM DENMAN,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Claimant.

[Endorsed]: Filed Dec. 9, 1913. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [1226]

In the District Court of the United States in and for the Northern District of California, First Division.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of Himself and the Owners, Officers and Crew of Said Steamship, Libelant,

VS.

The American Steamship "BEAVER," Her Engines, etc.

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

Stipulation as to Omission of Papers from Apostles and as to Sending up Original Exhibits.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that the following pleadings and papers need not be included in the Apostles on Appeal herein:

- 1. Petition and libel in intervention of St. Paul Fire & Marine Insurance Co. filed February 28, 1911.
 - 2. Answer to same filed April 25, 1911.
 - 3. Original claim filed December 6, 1910.
- 4. Claim in intervention suit filed December 6, 1910.

San Francisco & Portland Steamship Co. 1441

- 5. Monitions to marshal and returns, filed November 28, 1910, and December 3, 1910.
 - 6. All briefs.
- 7. Notice of St. Paul Fire & Marine Insurance Co. for leave to intervene, filed February 25, 1911. [1227]
- 8. Notice of motion to consolidate causes, etc., filed May 9, 1911.
- 9. Order extending time to take evidence, filed June 12, 1911.
- 10. Notice of motion for submission, filed August 11, 1911.
- 11. Order setting aside submission of causes, filed October 30, 1911.
- 12. Dismissal of libel in intervention of St. Paul Fire & Marine Insurance Co., filed March 27, 1913.
- 13. Stipulation and order substituting Francis Krull for James P. Brown as Commissioner, filed May 26, 1913.

14. Stipulation extending time to file brief, filed October 3, 1913.

15. Intervening Libelant's Exhibit A, being brief statement in Norwegian as to Rule 16.

And it is further stipulated and agreed that all of the original exhibits introduced in evidence in the above cause may be sent up to the Circuit Court of Appeals for the Ninth Circuit as original exhibits and need not be copied.

Dated, December 8th, 1913.

McCLANAHAN & DERBY,
Proctors for Appellant,

McCUTCHEN, OLNEY & WILLARD,

WILLIAM DENMAN,

Proctors for Appellee. [1228]

Order [for Transmission of Original Exhibits to U.S. Circuit Court of Appeals].

Pursuant to the foregoing stipulation, IT IS HEREBY ORDERED that all of the original exhibits introduced in evidence in the above cause may be sent up to the Circuit Court of Appeals for the Ninth Circuit as original exhibits and need not be copied.

Dated, December 9, 1913.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Dec. 9, 1913. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [1229]

In the District Court of the United States, in and for the Northern District of California, First Division.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of Himself and the Owners, Officers and Crew of Said Steamship, Libelant,

VS.

The American Steamship "BEAVER," Her Engines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That Olaf Lie, libelant herein, as principal, and the National Surety Company of New York, a body corporate duly incorporated under the laws of the State of New York and authorized to act as surety under the Act of Congress approved March 13th, 1904, as amended by the Act of Congress approved March 23d, 1910, whose principal office is located in the city of New York, as surety, are held and firmly bound unto the San Francisco & Portland Steamship Company, claimant herein, in the sum of Two Hundred and Fifty Dollars (\$250) to be paid to the said San Francisco & Portland Steamship Company, its successors and assigns, for the payment of which well and truly to be made, we bind ourselves and each of us and our respective heirs, executor, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12th day of December, 1913. [1230]

WHEREAS, Olaf Lie, libelant herein, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree of the District Court of the United States for the Northern District of California, dated December 2d, 1913, and filed December 5th, 1913, in a suit wherein Olaf Lie is libelant against the American steamship "Beaver," her engines, etc., and wherein the said San Francisco & Portland Steamship Company is claimant of said "Beaver";

NOW, THEREFORE, the condition of this obligation is such that if the said libelant and appellant shall prosecute said appeal with effect, and pay all costs which may be awarded against him as such appellant, if the appeal is not sustained then this obligation shall be void; otherwise the same shall remain in full force and effect.

OLAF LIE,
By E. B. McCLANAHAN,
And S. G. DERBY,

His Attorneys.

NATIONAL SURETY COMPANY OF NEW YORK.

[Seal] By FRANK L. GILBERT, Its Resident Vice-president and Pacific Coast General Manager and Attorney in Fact.

The foregoing cost bond on appeal is hereby approved as to form, amount and sufficiency of surety.

WILLIAM DENMAN,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Claimant and Appellee.

[Endorsed]: Filed Dec. 13, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1231]

In the District Court of the United States in and for the Northern District of California, First Division.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of Himself and the Owners, Officers and Crew of Said Steamship, Libelant,

VS.

The American Steamship "BEAVER," Her Engines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

Notice of Filing Bond on Appeal.

To the San Francisco & Portland Steamship Company, Claimant and Appellee Herein, and to William Denman, McCutchen, Olney & Willard, Its Proctors:

Please take notice that libelant's bond on appeal for costs in the sum of \$250.00 was filed in the office of the above-named court on the 13th day of December, 1913, with the libelant herein as principal, and the National Surety Company, a corporation duly organized and existing under the laws of the State of New York and authorized to do business in the State of California, whose residence is in New York and whose local office is at 105 Montgomery

Street, San Francisco, as surety.

Dated: December 13th, 1913.

McCLANAHAN & DERBY,

Proctors for Libelant and Appellant. [1232] Receipt of a copy of the within Notice is hereby admitted this 13th day of December, 1913.

WILLIAM DENMAN,

McCUTCHEN, OLNEY & WILLARD, Proctors for Claimant and Appellee.

[Endorsed]: Filed Dec. 15, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1233]

In the District Court of the United States in and for the Northern District of California, First Division.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of Himself and the Owners, Officers and Crew of Said Steamship, Libelant,

VS.

The American Steamship "BEAVER," Her Engines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

Assignment of Errors.

Now comes Olaf Lie, master of the Norwegian steamship "Selja," on behalf of himself and the

San Francisco & Portland Steamship Co. 1447 owners, officers and crew of said steamship, libelant in the above cause and appellant herein, and says that in the record, opinions, decisions, interlocutory and final decrees and proceedings in the above cause there is manifest and material error, and said appellant now makes, files and presents the following assignment of errors on which he relies, to wit:

- 1. That the Court erred in holding, deciding and decreeing herein that libelant recover no damages either for himself individually or for the owner of the Norwegian steamship "Selja," and in not awarding to libelant the full damages suffered by himself and said owner as set forth in the final decree herein.
- 2. That the Court erred in holding, deciding and decreeing that the damages of the owner of the "Selja" and the libelant as her master should be apportioned under the usual rule of [1234] cross-liabilities and subject to the offsets specified in Clause 6 of the Interlocutory Decree herein, and in not awarding said damages in full without offset.
- 3. That the Court erred in allowing any offsets under Clause 6 of the Interlocutory Decree herein.
- 4. That the Court erred in holding and deciding that the said steamship "Selja" was in any way at fault in the collision with the steamship "Beaver," which was the subject of this action.
- 5. That the Court erred in holding and deciding that the said "Selja" violated the second paragraph of Rule 16 regulating the navigation of vessels at sea (26 St. at L. 326).
 - 6. That the Court erred in holding and deciding

that the violation by the "Selja" of said Rule 16 was a contributing cause to the collision herein.

- 7. That the Court erred in holding and deciding that where a vessel has committed a positive breach of a statutory duty she must show not only that probably her fault did not contribute to the disaster but that it could not have done so.
- 8. That the Court erred in not holding and deciding that where a vessel is so navigated as to enable her to come to a stop before collision with another vessel, after sighting such other vessel, her prior violation of said Rule 16 is not a contributing cause of the collision, and in not applying said rule to the case at bar.
- 9. That the Court erred in holding that said "Selja" and said "Beaver" were equally at fault, and in not applying the major and minor fault doctrine and holding the "Beaver" solely liable for the collision.
- 10. That the Court erred in not making and entering its final decree herein allowing libelant all damages suffered by himself and the owner of said "Selja," with interest and costs. [1235]
- 11. That the Court erred in dividing the costs herein and not allowing libelant his costs herein.

In order that the foregoing assignment of errors may be and appear of record, said appellant files and presents the same, and prays that such disposition be made thereof as is in accordance with law and the statutes of the United States in such cases made and provided, and said appellant prays a reversal of the San Francisco & Portland Steamship Co. 1449 decree herein heretofore made and entered in the above cause and appealed from.

Dated: San Francisco, Cal., December 17th, 1913. McCLANAHAN & DERBY,

Proctors for Libelant and Appellant.

Receipt of a copy of the within Assignment of Errors is hereby admitted this 17th day of December, 1913.

WILLIAM DENMAN,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Claimant and Appellee.

[Endorsed]: Filed Dec. 19, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1236]

In the District Court of the United States in and for the Northern District of California, First Division.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of Himself and the Owners, Officers and Crew of Said Steamship, Libelant,

VS.

The American Steamship "BEAVER," Her Engines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

Stipulation [as to Translation of Intervening Libelant's Exhibit "A"].

It is hereby stipulated and agreed that the following translation of Intervening Libelant's Exhibit "A" made at the Norwegian Consulate in San Francisco is a correct translation of said exhibit, and that said translation may be transmitted to the Circuit Court of Appeals herein instead of said original exhibit:

"Translation: A steam vessel which hears a fog signal of another vessel apparently forward of her beam and the position of which cannot with certainty be determined shall, so far as present circumstances will permit, stop her engine and navigate with care until all danger of collision is over."

Dated: December 17th, 1913.

McCLANAHAN & DERBY,
Proctors for Appellant.
WILLIAM DENMAN,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Appellee.

[Endorsed]: Filed Dec. 19, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1237]

In the District Court of the United States in and for the Northern District of California, First Division.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," etc.

Libelant.

VS.

The American Steamship "BEAVER," Her Engines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Claimant.

Stipulation as to Exhibits Attached to Depositions.

It is hereby stipulated and agreed that the attached translations made at the Norwegian Consulate in San Francisco of Libelant's Exhibit 1 and 2 attached to the depositions of the officers of the S. S. "Selja" are correct and may be transmitted to the Circuit Court of Appeals together with said original exhibits in Norwegian. It is further stipulated, however, that said translations are subject to such explanation thereof as may be found in the testimony.

Dated: December 30th, 1913.

McCLANAHAN & DERBY,
Proctors for Libelant and Appellant.
McCUTCHEN, OLNEY & WILLARD,
IRA A. CAMPBELL,
WILLIAM DENMAN,

Proctors for Claimant and Appellee. [1238]

Translation of Libelant's Exhibit 1.

Tuesday 22 November 1910.

From 1 o'clock a. m. proceeded at partly half and partly full speed with respectively 40 and 60 revolutions a minute owing to fog.

From 8 a. m. proceeded at very slow speed about 20 revolutions. At 1 p. m. there was telegraphed half speed and then proceeded with about 40 revolutions until 3.5" p. m., when slow speed was ordered and at 3.10" stop. At 3.15" full speed astern was ordered, which was immediately obeyed, and the engines worked astern for about three minutes, when there was signaled stop. Then we were ordered by the Captain to come up from the engine room, and we each one went to his place at the boats. The 3d engineer and an oiler had the watch from 12 to 4 p. m. About 3.15 the Chief and 2nd engineer heard a deep whistle and saw the contour of a vessel, and both hurried down into the engine room. The engine was then going full speed astern, and the Chief engineer assumed command.

San Francisco 23 November 1910.

Sgd. R. EGGEN, Chief Engineer.

AXEL ANDERSEN, 2nd engineer.
PEDAR HANSE, 3d engineer. [1239]

Translation of Libelant's Exhibit 2. Log-book Entry for Steamer "Selja."

Tuesday 22 November 1910 on the voyage from Yokohama to San Francisco. At 1 a. m. the fog San Francisco & Portland Steamship Co. 1453

closed down, wind light and changeable, high westerly swell; according to reckoning about 70 miles off Point Reyes. Steered true S. 52° E. and kept the whistle going. At 5.30 a. m. commenced to sound and kept the lead going until 8 a. m. when according to soundings (45 fathoms) judged to be about 7 miles off Point Reyes.

We then decided to change the ships course and go westward with about 20 revolutions to keep the vessel steering. The fog was then very thick.

Changed the course again at 9.30 and steered East by N. by compass with the same speed and kept the lead going, until we had 40 fathoms. The foghorn at Point Reyes could not as yet be heard. At 11 a. m. again swung westerly.

At 1. p. m. the fog seemed to lift a little, and we decided to go eastward (S. 60° E. magn.) again with about 40 revolutions (6 miles speed) at the same time sounding every five minutes. At 2.30 p. m. heard the foghorn at Point Reyes a little on port bow and passed same at 2.50 about 1–1.½ miles off, according to sounding. We then set the course by compass S. 65° E. straight for the lightship.

At 3 o'clock we heard a deep steam whistle ahead quite faint and from then on heard it about every minute; we answered with about the same interval. At 3.5" p. m. ordered slow speed, as we heard the whistle nearing, and at 3.10 stopped the engine, the vessel being then nearly at a standstill. At 3.15" saw the contour of the other vessel, and we then ordered full speed astern at the same time giving three

blasts in the whistle. [1240] We then heard also three blasts from the other steamer, but it showed up coming along with so much speed, that we could see the foam at its bow and coming at a right angle with our vessel, as she had swung through reversing the engines.

About 1 1½ minute after we saw the vessel, it smashed into our port side at the fore rigging, and penetrated our vessel through ship and cargo for about 10 feet, when it stopped and backed out at once.

All boats were at once made ready. The port gig with some of the crew and the Captain, wife and 2 children left the ship first then the port life boat. The Captain, 2nd mate, and 2nd engineer and some of the crew went into the starboard gig with the ship's papers and logbook, but as the ship listed so much to port, the boat was crushed against the side and the ship's papers and logbook were lost. Several were thrown into the sea, while the Captain, 2nd mate and one of the crew succeeded in climbing back on board, jumped overboard on the other side and were picked up by one of the other steamers boats, when they rowed around to the starboard side and picked up those in the water. The starboard life boat could not be launched owing to the great list. The Selja sank in 15 minutes after the collision and turned turtle as she sank.

The vessel that ran into us proved to be the steamer Beaver of San Francisco belonging to San Francisco and Portland S. S. Co.

In calling the roll of the crew after we cam on board the Beaver, it was found, that two Chinese San Francisco & Portland Steamship Co. 1455 seamen were missing.

The Beaver returned to San Francisco after we were satisfied that no one was to be seen afloat, where the Selja went down. [1241]

During the whole time one of the mates and the captain were on the bridge and a lookout on the forecastle. At the sounding machine were one of the mates and some of the crew.

San Francisco 23 November, 1910.

Sgd. OLAF LIE,

Master.
A. HALVORSEN,
1st Mate.
ALFRED LARSEN,
2nd Mate.
ARVID BJORN,
3d Mate.

[Endorsed]: Filed Dec. 31, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1242]

In the District Court of the United States for the Northern District of California.

PORTLAND AND ASIATIC STEAMSHIP COM-PANY, a Corporation,

Libelant,

VS.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Respondent.

Libel in Personam [in Portland and Asiatic Steamship Co. vs. S. F. & Portland Steamship Co.].

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California:

The libel of the Portland and Asiatic Steamship Company, a corporation, against the San Francisco & Portland Steamship Company, a corporation, in a cause of collision, civil and maritime, alleges as follows:

T.

That libelant is and at all times in this libel mentioned was a corporation duly organized and existing under the laws of the State of Oregon, and that respondent is and at all times in this libel mentioned was a corporation organized and existing under the laws of the State of California, with its principal place of business in the City and County of San Francisco in said State and in the Northern District of California, and the owner of the American steamship "Beaver" hereinafter mentioned; and that both libelant and respondent occupy the same offices both in said City and County of San Francisco and in the City of Portland in the State of Oregon, and have the same corporate officers who act in similar capacities in each of said corporations. [1243]

II.

That on, to wit, the 1st day of February, 1909, a certain Time Charter-party was made and entered into in the City of New York, State of New York, by and between this libelant and the owners of the Nor-

wegian steamship "Selja," wherein and whereby said owners of said "Selja" chartered and let to hire the said steamship to the libelant herein for a period of about three years, and that said steamship was proceeding under said charter-party at all times hereinafter mentioned. Libelant further alleges that said charter-party was not a demise of the vessel, but was a mere contract of affreightment for the carriage of merchandise and livestock and passengers by the libelant on board said vessel.

TTT.

That in pursuance of said charter-party, and upon one of the voyages duly entered upon thereunder by said steamship "Selja," libelant procured to be shipped on board said steamship by various persons in the months of October and November, 1910, at the ports of Hong Kong and Shanghai, in the Empire of China, and the ports of Kobe and Yokohama, in the Empire of Japan, a large and varied assortment of goods, wares and merchandise destined in part for the port of San Francisco in the State of California and in part for the port of Portland in the State of Oregon, and that bills of lading were duly issued for said goods, wares and merchandise by this libellant to the shippers of the same.

IV.

That in and by said bills of lading it was provided that freight should be paid to libelant for the carriage aforesaid on said goods, wares and merchandise at certain rates [1244] which were the usual and reasonable rates for the transportation of said goods, wares and merchandise to said ports of San Fran-

cisco and Portland, and that said freight amounted in the aggregate, excluding all prepaid freight, to the sum of Fourteen Thousand and Eighty-eight and 36/100 Dollars (\$14,088.36), and was payable at the said ports of San Francisco and Portland upon the delivery of said goods, wares and merchandise to the consignees thereof.

V.

That the aforesaid bills of lading in the last article of this libel mentioned are very numerous and are scattered in the hands of the consignees of said goods. wares and merchandise in various parts of the world, and all of libelant's copies thereof, so far as it has such copies, are at the various ports in China and Japan herein mentioned and cannot be set out in this libel at the present time; that libelant has a duplicate of the ship's manifest taken from said bills of lading showing the nature of the goods, wares and merchandise shipped and the amount of freight payable thereon, but that said document and the facts contained therein are complicated and of great length and are not herein fully set forth for the reason that all facts in regard thereto are as fully within the knowledge of the respondent as they are within the knowledge of libelant, and that the respondent has full access to all documents and all facts connected with libelant's said claim for freight.

VI.

That the aforesaid steamship "Selja" left the port of Yokohama, which was the last place at which she loaded any of the goods, wares and merchandise aforesaid, on, to wit, the [1245] 2d day of Novem-

ber, 1910, on a voyage to the said ports of San Francisco and Portland under the Time Charter aforesaid, and that on Tuesday, the 22d day of November, 1910, a collision occurred between the said steamship "Selja" and the aforesaid steamship "Beaver," owned by the respondent herein, on the high seas near Point Reyes on the coast of California, and within a few hours' sailing distance of the aforesaid port of San Francisco, by reason of which the said steamship "Selja" was sunk and the goods, wares and merchandise herein described and libelant's freight thereon were totally lost.

VII.

That libelant is informed and believes and upon such information and belief alleges that the following are, in brief, the circumstances of said collision:

On the said 22d day of November, 1910, the said steamship "Selja" was proceeding on her voyage aforesaid to the port of San Francisco, and at about the hour of 1 o'clock A. M. on said day, when about 70 miles off Point Reyes on the coast of California, she encountered a dense fog which did not lift at any time before said collision, which occurred but a short interval of time after 3:15 P. M. of said day. That at about the hour of 2.30 P. M. the fog-horn on Point Reves was heard off the port bow at a seeming distance of about 2 miles, and at 2:50 P. M. the said fog-horn was heard right abeam of the "Selja," and her course was then changed from south 60° east to south 65° east magnetic, heading for the lightship off the Golden Gate. Her speed at this time was about 6 miles per hour; her master and third

officer were on the bridge; a competent man was on the lookout and another at the wheel, and they, as well as the rest of the crew who were variously employed in [1246] their respective duties, were faithfully attending thereto; soundings were being taken and the vessel's fog-whistle was being blown, as required by the regulations for avoiding collisions at sea, up to the time of the collision itself hereinafter described. At about 3 o'clock P. M. a deep distant whistle was heard in an ascertained position dead ahead of the "Selja" and apparently a long way off, which afterwards proved to be that of the aforesaid steamship "Beaver" outward bound from the port of San Francisco on one of her regular vovages from that port to the port of Portland, in the State of Oregon, but that at the time the officers of said "Selja" could not tell whether the same was the whistle of a steamer or not. Said whistle was at once answered by a long blast of the "Selja's" The whistle of the "Beaver" was repeated whistle. at intervals of about a minute but seemingly nearer. until at about 3:05 P. M. the "Selja's" engines were put at slow speed, and the officers of said "Selja" then began to time said whistles to ascertain whether they were those of a steamer, which fact they did not yet know. That after timing said whistles, and discovering therefrom by this means at about 3:10 P. M. that said whistle was that of an approaching steamer. the "Selja's" engines were stopped. The failure to stop said engines earlier was in no way a contributing cause to the collision which followed, which was caused solely by the gross faults of the "Beaver." At the time the "Selja's" engines were stopped she was making about 3 knots per hour, and her course was still south 65° east, and this course was not changed, but after the engines were stopped and at 3:15 P. M. the vessel had swung about one point to starboard. The fog was still dense: there was but little wind and a westerly swell; the fog-whistle of the "Selja" had been regularly answering that of the "Beaver" up to this time. Under [1247] these conditions and circumstances the "Beaver" suddenly appeared through the fog at a distance of about 300 yards, and about 2 points on the "Selja's" bow, coming at a very high rate of speed, to wit, at a speed of eleven knots an hour or more, and heading for the port side of the "Selja." The master of the "Selja" at once ordered his engines full speed astern at the same time giving three blasts of her whistle, and her engines were put full speed astern, and the steamship began to gather some sternway and her bow began to swing more to starboard under the effect of the reverse movement of her engines, but the "Beaver," without apparently checking her speed or changing her course, struck the "Selja" on the port side between the forward and the main hatch, and cut her way through the steel plates and cargo of the "Selja" for a distance of about 10 feet or more, and then backed out clear of the "Selja." After the impact, the "Selja" listed heavily to port and water poured into the hole made by the "Beaver's" bow, and the "Selja's" master immediately ordered her boats lowered and her engines stopped. That with the assistance of some of the "Beaver's" boats the master,

officers and crew of the "Selia," together with the master's wife and two children, were taken from the "Selia" on board the "Beaver," and a few minutes thereafter the "Selja" turned turtle and sank together with all of the goods, wares and merchandise herein described, and that the sinking of said goods, wares and merchandise and the consequent loss of libelant's freight thereon as hereinbefore described was caused solely by the injuries received in said collision.

And libelant further alleges upon information and belief that the said collision was in no way due to any fault on the part of the said "Selja" which was at said time, and at all [1248] times in this libel mentioned before such collision, in all respects tight, staunch and strong and in every respect well manned. tackled, appareled and appointed and having the usual and necessary complement of officers and men, and that said "Selja" was in all respects carefully managed and navigated; but that said collision was wholly due to and brought about by the negligence and incompetency of those in charge of the said "Beaver" by their failure to duly and properly observe the rules and laws of navigation, and not otherwise.

Libelant further alleges, however, that the freight interest upon which it seeks a recovery in this libel was an innocent one, and that the aforesaid steamship "Beaver" is responsible for the loss of said freight irrespective of the question whether the aforesaid steamship "Selja" was partly in fault or not.

VIII.

That by reason of said collision libelant's freight, amounting to the sum of Fourteen Thousand and Eighty-eight and 36/100 Dollars (\$14,088.36), as hereinbefore described, was totally lost and it has been damaged by reason of said collision in said amount.

TX.

That all and singular the premises are true and are within the admiralty and maritime jurisdiction of this court.

WHEREFORE, the libelant prays that a monition in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said San Francisco & Portland Steamship Company, and that it be cited to appear and answer upon oath all [1249] and singular the matters aforesaid, and that this Honorable Court would be pleased to decree payment of the freight aforesaid, with interest and costs, and that the libelant may have such other and further relief in the premises as in law and justice it may be entitled to receive.

Dated March 28th, 1911.

McCLANAHAN & DERBY.

Proctors for Libelant.

Verification of the foregoing libel is hereby expressly waived.

PAGE, McCUTCHEN, KNIGHT & OLNEY, Attorneys for Respondent. [1250]

Interrogatories Propounded to Respondent by Libel.

The libelant herein, in pursuance of Admiralty Rule 23 in such cases made and provided, propounds the following interrogatories to the respondent herein:

1.

What is the maximum speed of the American steamship "Beaver," and her revolutions and horse-power at that speed?

2.

What is her displacement fully loaded?

3.

What was her displacement upon proceeding to sea on November 22d, 1910?

4.

What was the slip of her propeller on that occasion?

5.

At what speed was the said "Beaver" proceeding at 3 o'clock P. M. on November 22d, 1910, what revolutions were her engines making at that time and what was the slip of her propeller?

6.

What variations, if any, took place in said speed and revolutions between the hours of 3 P. M. and 3:15 P. M.?

7.

Were any orders given on board said steamship "Beaver" to either stop or reverse her engines between said hours of 3 P. M. and 3:15 P. M.?

8.

If your answer to the seventh interrogatory is in

San Francisco & Portland Steamship Co. 1465 the affirmative, state what such orders were, when they were given and when they were executed? [1251]

9.

When did the "Beaver" enter the fog in the libel mentioned?

10.

Did she, at the time of entering the fog, reduce her speed and, if so, from what speed was such reduction made and what was the amount of such reduction?

11.

From 3 P. M. to 3:15 P. M. on November 22d, 1910, were there any conditions prevailing on the bridge of the "Beaver" which would make it difficult to hear the fog-signals of other vessels?

12.

If your answer to the eleventh interrogatory is in the affirmative, state in detail what those conditions were.

McCLANAHAN & DERBY.

Proctors for Libelant.

[Endorsed]: Filed Mar. 30, 1911. Jas. P. Brown. Clerk. By M. T. Scott, Deputy Clerk. [1252]

[Answer of S. F. & Portland S. S. Co. to Libel of Portland & Asiatic S. S. Co.]

In the District Court of the United States for the Northern District of California.

PORTLAND AND ASIATIC STEAMSHIP,
Libelant.

VS.

SAN FRANCISCO AND PORTLAND STEAM-SHIP COMPANY.

Respondent.

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States, for the Northern District of California:

The answer of San Francisco and Portland Steamship Company, respondent herein, to the libel of Portland and Asiatic Steamship Company, libelant herein, respectfully shows to this Court: [1253]

I.

Answering unto the first, second, third, fourth, fifth and sixth articles in said libel, the respondent admits the same.

II.

Answering unto the seventh article in said libel, the respondent admits that at the time referred to in the said libel, the steamship "Beaver" was outward bound from San Francisco to Portland; that there was at said time a dense fog prevailing and that the "Beaver" was repeating blasts of her whistle at intervals of less than a minute. The respondent admits that the "Beaver" struck the "Selja" and that

the latter sunk, and that the libelant's freight was thereby lost, but it denies that before the collision, at the time alleged, the "Beaver" was going at a speed of eleven knots or more, or that she had not checked her speed or changed her course; on the contrary, the respondent avers that at the said time, the "Beaver's" engines were and had for thirty seconds been going full speed astern and that her head was swinging rapidly to starboard with the intention of stopping, or, if impossible, of passing astern of the "Selja." The respondent admits that at some time in the afternoon, but whether first at three o'clock the respondent is ignorant, the [1254] "Selja" heard a deep whistle, afterwards ascertained to be that of the "Beaver," but it denies that such whistle was heard in an ascertained position; it admits that the engines of the "Selja" were stopped at some period after the hearing of the said whistle, but it denies that the failure to stop said engines sooner was in no way a contributing cause to the collision, and it denies that said collision was caused solely by the gross faults of the "Beaver." It denies that the said collision was in no way due to any fault on the part of the "Selja," or that the "Selja" was in all respects carefully managed or navigated; it denies that said collision was wholly, or at all, due to or brought about by the negligence or incompetency of those in charge of the "Beaver" by reason of their failure to duly or properly observe the rules or laws of navigation, or otherwise. It alleges on the contrary, that the master of the "Selja" failed to observe the rules of navigation in the following partic-

ulars, viz.: First, that he did not cause the engines of the "Selja" to be stopped immediately on hearing the fog-signal of the "Beaver" forward of the "Selja's" beam, the position of the "Beaver" at that time, except as to the fact that she was forward of the beam, not being ascertained or ascertainable unless the fog should lift, and there being no special circumstances requiring the "Selja" to keep her headway. Second, that prior to three o'clock [1255] P. M. and thereafter for a considerable period after hearing the "Beaver's" signal ahead, the "Selia" proceeded towards the sound of the signal at a high rate of speed, whereby she reached the point of collision, which point would not have been reached (the collision thereby being averted) if she had not been going at said high rate of speed. Third, that after the "Selja" came to be stopped in the water, if such was the fact, the said master failed to give a signal thereof as required by the rules of navigation.

As to all other of the allegations of said article, not specially admitted or denied herein, the respondent avers that it is ignorant, so that it can neither admit or deny the same, wherefore it calls for proof thereof, if the same be pertinent.

III.

Answering unto the eighth article in said libel, this respondent admits the loss of freight therein described.

IV.

Answering unto the ninth article in said libel, this respondent admits the jurisdiction of this Honorable

Court, but denies that all and singular the premises are true except as is hereinbefore specially admitted.

WHEREFORE, the respondent prays that the said libel be dismissed and for costs.

PAGE, McCUTCHEN, KNIGHT & OLNEY, WILLIAM DENMAN,

Proctors for Respondent. [1256]

Answers to Interrogatories Propounded to Claimant by Libel.

Answering to interrogatory No. I, claimant says that it does not know the maximum speed of the "Beaver" at the date of the filing of the libel, but that her speed at her trial trip at Newport News, in 1910, was 17.6 knots at 86 revolutions, and 4448 I. H. P.

Answering interrogatory No. II, claimant says that her displacement, fully loaded, is 5950 tons on a 19-foot 6-inch draught.

Answering interrogatory No. III, claimant says that her displacement on proceeding to sea November 22, 1910, was 4800 tons.

Answering interrogatory No. IV, claimant says that it does not know.

Answering interogatory No. V, claimant says that the speed of the "Beaver" at three o'clock was eleven knots, her engines making 77 revolutions per minute, and with a slip of 25 per cent.

Answering interrogatory No. VI, claimant says that at 3:10 o'clock P. M., the revolutions were reduced from 77 to 76.

Answering interrogatory No. VII, claimant says, "Yes."

Answering interrogatory No. VIII, claimant says that orders were given to reduce the speed to 76 revolutions at about three o'clock, and that they were executed shortly thereafter.

Answering interrogatory No. IX, claimant says that the "Beaver" entered the fog on leaving the port of San Francisco.

Answering interrogatory No. X, claimant says that she did not reduce her speed as, at the time of entering the fog, she had not raised her rate of speed from her rate inside the harbor. [1257]

Answering interrogatory No. XI, claimant says, "No, other than climatic and weather conditions."

City and County of San Francisco, State of California,—ss.

A. J. Frey, being first duly sworn, deposes and says:

That he is the Assistant Managing Agent of the claimant corporation, and that he is authorized to make oath on its behalf; that he has read the foregoing answers to the interrogtories propounded by the libel, and that the same are true as he verily believes.

A. J. FREY.

Subscribed and sworn to before me this 15th day of May, 1911.

[Seal] FRANK L. OWEN,

Notary Public in and for the City and County of San Francisco, State of California.

Service of the within answer and receipt of a copy is hereby admitted this 16th day of May, 1911.

McCLANAHAN & DERBY,

Proctors for Libelant.

San Francisco & Portland Steamship Co. 1471 [Endorsed]: Filed May 17, 1911. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk. [1258]

[Amendments to Libel in Portland & Asiatic S. S. Co. vs. S. F. & Portland S. S. Co.]

In the District Court of the United States for the Northern District of California, First Division.

No. 15,130.

PORTLAND AND ASIATIC STEAMSHIP COMPANY, a Corporation,

Libelant,

VS.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Respondent.

Now comes the libelant herein and pursuant to the stipulation of the parties herein dated April 22d, 1912, hereby amends its libel herein by adding after Article VIII of said libel a new Article numbered VIIIa reading as follows:

VIIIa.

And libelant further alleges, by way of amendment to its libel herein, as follows:

That at the time of said collision libelant had on board said steamship "Selja" and was the owner of the following articles:

1170 tons of Bunker Coal of the reasonable value of \$2,565 a ton and of the total value of \$3,001.05; 30 flour slings of the reasonable value of \$5.00 each and of the total value of \$150.00; one house flag of

the reasonable value of \$3.00, and dunnage mats and wood of the reasonable value of \$55.00; all of said articles being of the total value of \$3,209.05.

That by reason of said collision and the negligence of those in charge of the steamship "Beaver" as aforesaid, all of said articles were totally lost, and libelant has been further [1259] damaged by reason of said collision in said above-mentioned amounts, for which it prays full recovery with interest in addition to its recovery for freight.

Dated: April 22d, 1912.

McCLANAHAN & DERBY,

Proctors for Libelant.

Received copy of within Amendment to Libel, April 22d, 1912.

PAGE, McCLANAHAN, KNIGHT & OLNEY, DENMAN AND ARNOLD,

Attorneys for Respondent.

[Endorsed]: Filed Apr. 23, 1912. Jas. P. Brown, Clerk. By M. T. Scott, Deputy Clerk. [1260]

In the District Court of the United States for the Northern District of California, First Division.

No. 15,130.

PORTLAND AND ASIATIC STEAMSHIP COMPANY, a Corporation,

Libelant,

San Francisco & Portland Steamshin Co. 1473 SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Respondent.

Stipulation for Amendment of Libel in Portland & Asiatic S. S. Co. vs. S. F. & Portland S. S. Co.

It is hereby stipulated and agreed by and between the parties hereto that the libel herein may be amended by adding after article VIII thereof a new article numbered VIIIa, reading as follows:

"VIIIa.

And libelant further alleges, by way of amendment to its libel herein, as follows:

That at the time of said collision libelant had on board said steamship 'Selja' and was the owner of the following articles:

1170 tons of Bunker Coal of the reasonable value of \$2,565 a ton and of the total value of \$3,001.05; 30 flour slings of the reasonable value of \$5.00 each and of the total value of \$150.00; one house flag of the reasonable value of \$3.00, and dunnage mats and wood of the reasonable value of \$55.00; all of said articles being of the total value of \$3,209.05.

That by reason of said collision and the negligence of those in charge of the steamship 'Beaver' as aforesaid, all [1261] of said articles were totally lost, and libelant has been further damaged by reason of said collision in said above-mentioned amounts, for which it prays full recovery with interest in addition to its recovery for freight."

It is further stipulated and agreed that said amendment may be made separately and without filing an amended libel, that the verification of said amendment is hereby waived and that the respondent have 10 days from the date of service of said amendment within which to answer the same.

And it is further stipulated and agreed that the making of said amendment shall in no way affect the submission of the above cause for decision on the question of liability for the collision described in the libel herein.

Dated: April 22d, 1912.

McCLANAHAN & DERBY,

Proctors for Libelant.

PAGE, McCUTCHEN, KNIGHT & OLNEY, WILLIAM DENMAN, DENMAN & ARNOLD,

Proctors for Respondent.

We, the proctors for the parties in Case No. 15,099 consolidated for trial with the above cause, hereby consent to and approve the foregoing stipulation.

McCLANAHAN & DERBY,

Proctors for Libelant in Case No. 15,099.
LOUIS T. HENGSTLER,

Proctor for Intervening Libelant in Case No. 15,099. PAGE, McCUTCHEN, KNIGHT & OLNEY.

WILLIAM DENMAN, DENMAN & ARNOLD,

Proctors for Claimant in Case No. 15,099. [Endorsed]: Filed Apr. 23, 1912. Jas. P. Brown, Clerk. By M. T. Scott, Deputy Clerk. [1262]

[Certificate of Clerk U. S. District Court to Apostles.]

United States of America, Northern District of California,—ss.

I. W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and hereunto annexed twelve hundred and sixty-two (1262) pages, numbered from 1 to 1262, inclusive, transmitted herewith in four volumes, the fourth volume of which is attached hereto; and with the accompanying exhibits, 36 in number, transmitted under separate covers, contain a full, true and correct transcript of the records as the same now appear on file and of record in the said District Court, in the cause entitled Olaf Lie etc. vs. The American Steamship "Beaver," No. 15,099, as consolidated with the case of Portland & Asiatic Steamship Company, etc., vs. San Francisco & Portland Steamship Company, etc., No. 15,030; said Transcript is made up pursuant to and in accordance with "Praecipe for Transcript on Appeal" (embodied in said Transcript), and the instructions of Messrs. McClanahan and Derby, proctors for libelants and appellants.

I further certify that the cost of preparing and certifying to the foregoing Transcript of Appeal is the sum of Six Hundred Seventy-four Dollars and Eighty Cents (\$674.80), and that the same has been paid to me by proctors for libelants and appellants herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 2d day of January, A. D. 1914.

[Seal]

W. B. MALING,

Clerk.

By Lyle S. Morris, Deputy Clerk.

[Endorsed]: No. 2365. United States Circuit Court of Appeals for the Ninth Circuit. Olaf Lie, Master of the Norwegian Steamship "Selja," on Behalf of Himself and the Owners, Officers and Crew of Said Steamship, Appellant, vs. San Francisco & Portland Steamship Company, a Corporation, Claimant of the American Steamship "Beaver," Her Engines, etc., Appellee. Apostles. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Received and filed January 2, 1914.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Meredith Sawyer, Deputy Clerk. In the United States Circuit Court of Appeals, for the Ninth Circuit.

No. 2365.

OLAF LIE, Master of the Norwegian Steamship "SELJA," etc.,

Appellant,

VS.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY,

Appellee.

Stipulation Waiving Printing of Original Exhibits.

Whereas, there are a very large number of exhibits in the above cause and it is deemed unnecessary by the parties that the same should be printed in that those referred to, if any, can be fully described in the briefs herein; now, therefore,

It is hereby stipulated and agreed that none of the exhibits in the above cause need be printed, but that the same may be considered as original exhibits even though not printed.

Provided, however, that either party may cause any of said exhibits to be printed either as a part of the record or as an appendix to its brief, and that the cost of such printing, if any, may be taxed as costs against the losing party. Dated: January 5th, 1914.

E. B. McCLANAHAN,
S. H. DERBY,
Proctors for Appellant.
WILLIAM DENMAN,
EDWARD J. McCUTCHEN
LEO A. CAMPBELL,

Proctors for Appellee.

Order [Waiving Printing of Original Exhibits].

Pursuant to the foregoing stipulation, IT IS HEREBY ORDERED that none of the exhibits in the above cause need be printed, but that the same may be considered as original exhibits even though not printed. Provided, however, that either party may cause any of said exhibits to be printed either as a part of the record or as an appendix to its brief and that the cost of such printing, if any, may be taxed as costs against the losing party.

Dated: January 5, 1914.

WM. W. MORROW, Circuit Judge.

[Endorsed]: No. 2365. In the U. S. Circuit Court of Appeals for the 9th Circuit. Olaf Lie, Master of Norwegian S. S. "Selja," etc., Appellant, vs. San Francisco & Portland S. S. Co., Appellee. Stipulation as to Exhibits and Order. Filed Jan. 5, 1914. F. D. Monckton, Clerk.

Libelant's Exhibit No. 19.*

STATEMENT OF CAPTAIN WM. KIDSTON, MASTER OF THE STEAMER "BEAVER."

Nov. 25, 1910.

U. S. Local Inspectors of Hulls & Boilers, San Francisco, Cal.

Gentlemen:

At 3:16 P. M. Nov. 22nd, bound from San Francisco to Portland, Pt. Reyes bearing NW. x W. ½ W, 6 miles Mag. south end bearing NW. ½ N. 4 miles, the S. S. "Beaver" was in collision with the Norwegian S. S. "Selja," sinking the latter and doing considerable damage to the S. S. "Beaver's" stem and bow plating forward of collision bulkhead.

The S. S. "Beaver" left Pier 40 at 12:50 P. M. and proceeded to sea going out the north channel. There was a light high fog, but the land and buoys marking the channel, plainly in sight. After getting through the channel, we encountered a very heavy westerly swell, had a good departure from #2 Red Buoy and set our usual course S. 83° W. Bridge Compass, Mag. S. 86° W. to Duxberry Reef Buoy which we passed ½ mile off at 2:15 P. M. Then altered course to N. 86° W. Bridge Compass (No deviation on this course) which course would take us 2½ miles off Pt. Reyes at this time 2:15 P. M. The fog would lift and shut down so that we could only see about 1/2 a mile at times, and continued so until 3:00 P. M., when the fog shut in thick. I then sent written instructions to the Chief Engineer to

^{[*}Printed at request of Libelant.]

slow the engine to 76 turns per minute. Our automatic fog whistle was blowing its usual blast of 5 seconds every minute; the lookout had been doubled. On the bridge with myself was the 2nd Officer and a Quartermaster. I had stepped off the bridge for a minute to the toilet, which is at the foot of the bridge ladder. When I returned to the bridge the 2nd Officer reported that he had just heard a steamer's whistle a point on our starboard bow. ordered the helm to starboard thinking that I was overtaking a steamer on the same course or some steamer bound down for the North Channel. Our automatic whistle blew just then, and after it stopped, I heard the "Selja" whistle, and it sounded about a point on our starboard bow, although our head had swung a half point to Port more than when we first heard her whistle. I then telegraphed to stop the engine and full speed astern. This was at 3:15 P. M., I ordered the helm hard-a-port and blew three whistles. Although I had not seen the steamer, I made up my mind that she was crossing our bow, and with the helm hard-a-port and backing full speed, I was trying to stop the ship's headway, or get her head cantered enough to starboard to pass around her stern.

A few seconds later we sighted the S. S. "Selja" about two ship's lengths ahead and a little on our starboard bow, and heading right across our bow. It was after we sighted the "Selja" that she answered our three whistles.

I saw that there was great danger of a collision and ordered the 2nd Officer to ring the telegraph two

or three times for full speed astern: this was to notify the engineer that I wanted all the power he had to back. Our head was swinging very fast to starboard and I thought we were going to swing clear. but just as we had lost our headway, but had not gathered any sternboard, the "Selja" being in the trough of the swell and our head pointing just forward of his midships, she was lifted on a big swell and carried hard against our stem, and as the "Beaver" came down with the swell, she crashed through the side of the "Selja," going into her about 10 or 12 feet. This was at 3:16 P. M. I stopped the Engines thinking to keep the "Beaver" in the hold, but she gather sternway and backed away from the other steamer. I saw that the "Selia" was doomed and sounded the crew to Boat Stations. Boats were all cleared away and two lowered and sent to rescue the crew of the "Selja." Bilges were sounded and fore peak examined, found that ship was not making any water. The S. S. "Selja" sank head first in ten minutes from the time she was struck. She sank in 30 fathoms of water, and when her bow struck the bottom, she was almost straight on end with her stern sticking out of water about 100 feet. Then she gradually turned bottom up and sank. We rescued the Captain's wife and two children and all the crew except two Chinese.

Our boats searched around after the "Selja" sank, not finding the missing Chinese. I ordered the boats back to the "Beaver," had them hoisted on board

and proceeded back to San Francisco, arriving at Pier 40—6:30 P. M.

Yours respectfully, (signed) WM. KIDSTON, Master S. S. "Beaver."

Subscribed and sworn to before me O. F. BOL-LES, U. S. Local Inspector, at San Francisco, Cal., this 25 day of Nov. 1910.

[Endorsed]: Libelant's Exhibit No. 19. Filed July 20, 1911, Jas. P. Brown, United States Commissioner for the Northern District of California, San Francisco.

[Endorsed on Cover of Transcript of Certain Original Exhibits]: Received Jan. 2, 1914. Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit. By [signed] Meredith Sawyer, Deputy Clerk.









